

REGULATION COMMITTEE

Tuesday, 22nd January, 2013

9.30 am

Council Chamber, Sessions House, County Hall,
Maidstone





AGENDA

REGULATION COMMITTEE

Tuesday, 22nd January, 2013, at 9.30 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, MBE,
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 I S Chittenden

Independent (1) Mr R J Lees

UNRESTRICTED ITEMS

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

1. Substitutes
2. Declarations of Interests by Members in items on the Agenda for this meeting.
3. Minutes (Pages 1 - 34)
 - (a) Committee: 5 September 2012
 - (b) Member Panel: 11 September 2012
24 September 2012
21 November 2012 (Sandgate)
21 November 2012 (Faversham)
4. Site Visit to Shaw Grange, Charing on Tuesday, 26 March 2012
5. Update from the Definitive Map Team (Pages 35 - 36)
6. Update from the Commons Registration Team (Pages 37 - 40)
7. Home to School Transport (Pages 41 - 42)

8. Update on Planning Enforcement Issues (Pages 43 - 64)
9. Other Items which the Chairman decides are Urgent
10. Motion to exclude the press and public

That under Section 100A of the Local Government Act 1972, the public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 5 and 6 of Part 1 of Schedule 12A of the Act.

EXEMPT ITEMS

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

11. Update on Planning Enforcement issues at Larkey Wood Farm, Chartham, Canterbury (Pages 65 - 68)

Peter Sass
Head of Democratic Services
(01622) 694002

Monday, 14 January 2013

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

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KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Wednesday, 5 September 2012.

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

IN ATTENDANCE: Mr S Bagshaw (Head of Fair Access), Mrs A Hayward (Manager for Primary Admissions & Transport), Miss M McNeir (Public Rights Of Way and Commons Registration Officer), Mrs S Thompson (Head of Planning Applications Group), Mr R Gregory (Principal Planning Officer - Enforcement) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS**16. Chairman's Announcement**

(Item 3)

The Chairman advised the Committee Members of an invitation from the Chairman of the Council for the Committee Members to have Lunch with him following its next meeting on 22 January 2013.

17. Minutes

(Item 4)

RESOLVED that the Minutes of the Committee meeting held on 22 January 2012 and of the Member Panels on 18 June 2012 and 17 July 2012 are correctly recorded and that they be signed by the Chairman.

18. Dates of meetings in 2013

(Item 5)

The Committee noted the following meeting dates in 2013:-

Tuesday, 22 January 2013;
Tuesday, 18 June 2013; and
Tuesday, 3 September 2013.

19. Amendments to Regulation Committee Member Panel procedures

(Item 6)

(1) The Democratic Services Officer reported the views of Mr T Simms, a member of the public that elected Members of other Local Authorities apart from Kent County Council should be permitted to address the Member Panels by right.

(2) The Chairman moved that in addition to the recommended amendments to the procedures. Paragraph 3 of each of the Member Panel procedures be amended by the deletion of the last sentence and replacement by:-

“They may ask for a solicitor or other professional agent to speak on their behalf.”
Carried unanimously.

(3) RESOLVED that:-

- (a) agreement be given to the amendments to the procedures set out in paragraph 3.1 of the report; and
- (b) paragraph 3 of each of the Member Panel procedures be amended by the deletion of the last sentence and replacement by:-

“They may ask for a solicitor or other professional agent to speak on their behalf.”

20. Home to school Transport: to include a presentation on transport policy for 16 Plus Pupils, Free Schools, Denominational Schools and Grammar Schools
(Item 7)

(1) The Head of Fair Access updated the Committee on the Kent Freedom Pass and the Kent 16+ Travel Card.

(2) The Head of Fair Access was asked to consider arrangements for the Vacant Seat Payment Scheme in the light of Members’ concerns that a seat could be withdrawn without notice.

(3) RESOLVED that:-

- (a) the report be noted; and
- (b) the Head of Fair Access be asked to consider arrangements for the Vacant Seat Payment Scheme in the light of Members’ concerns that a seat could be withdrawn without notice.

21. Update from the Commons Registration Team
(Item 8)

(1) The Schedule of Village Green Applications was tabled as Appendix A to the report.

(2) RESOLVED that the report be noted.

22. Republication of Common Land and Village Green Register Maps
(Item 9)

(1) In agreeing the recommendations of the Head of Regulatory Services, the Committee specified that once the fresh editions of the Register had been finalised

and published, the current Registers should be relocated to the new County Archives building or a similarly secure location.

(2) RESOLVED to:-

- (a) proceed with the proposal to publish fresh editions of the Registers of Common Land and Town or Village Greens; and
- (b) relocate the current Registers to the new County Archives building or to a similarly secure location once the new versions have been finalised and published.

23. Update on Planning Enforcement Issues

(Item 10)

(1) The Committee agreed to visit Shaw Grange, Charing as soon as practicable.

(2) The Head of Planning Applications Group tabled a letter from Lee Evans Consultants on behalf of LanceBox Ltd concerning their site at Manor Way Business Park, Swanscombe. This letter confirmed their intended adherence to the required 4 point compliance plan. Also tabled were photographs of various sites and a draft engineering plan for Woodger's Wharf.

(3) The Head of Planning Applications Group informed the Committee of the very recent receipt of a letter from Johnsons Recycling Ltd confirming that a revised scheme would be submitted by Monday, 10 September 2012.

(4) RESOLVED to endorse the actions taken or contemplated in the respective cases set out in paragraphs 5 to 27 of the report together within Schedules /Appendices 1, 2 and 3 of the report.

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REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Westgate Hall, Westgate Road, Canterbury CT1 2BT on Tuesday, 11 September 2012.

PRESENT: Mr M J Harrison (Chairman), Mr I S Chittenden, Mr R F Manning and Mr R A Pascoe

ALSO PRESENT: Mr G K Gibbens

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

12. Application to register land known as Scrapsgate Open Space at Minster-on-Sea as a new Village Green

(Item 3)

(1) Members of the Panel visited the site before the meeting. The visit was attended by Mr Ken Ingleton (Chairman of Minster-on-Sea PC) and by Mr John Stanford and Mr Mike Young (also Minster-on-Sea PC). Mr A D Crowther, Vice-Chairman of the Regulation Committee was also present.

(2) The Commons Registration Officer introduced the application which had been made by Minster-on-Sea PC under section 15 of the Commons Act 2006. She said that the land in question (except for a small tract to the north of the sewage pumping station) was owned by Swale BC who had made no formal objection.

(3) Swale BC had confirmed that the land had been registered in their name in 1967 and had also drawn attention to a reference to the Physical Training and Recreation Act 1937 contained in the Land Registry title. This suggested that the land might have been held for recreational purposes. However, no further documentation had been produced as supporting evidence to this effect.

(4) The Commons Registration Officer then explained that the task for the Panel was to consider whether it could be shown that a significant number of the residents of a locality or of any neighbourhood within a locality had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years up to the date of application. This meant that the Panel had to consider whether every single test contained in the Commons Act 2006 had been met. This was necessary, even though there had been no objection to the application.

(5) The Commons Registration Officer went on to consider each of the tests. She said that there had indisputably been no question of force or secrecy in the use of the site. Furthermore, there was no confirmation that the land had been held under the provisions of the Physical Education and Training Act 1937; nor was there any other

evidence that use had been with permission. She therefore concluded that use of the land had been “as of right.”

(6) The Commons Registration Officer then said that there was sufficient evidence to demonstrate that the land had been used for lawful sports and pastimes. Use had been by a significant number of people from the administrative area of Minster-on-Sea – as evidenced by the 86 user forms. This use had been taking place for well over the required 20 year period and had continued up to and beyond the date of application in November 2010.

(7) The Commons Registration Officer concluded her presentation by saying that as all the legal tests had been met, her recommendation to the Panel was that the land should be formally registered as a Village Green.

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

(9) RESOLVED to inform the applicant that the application to register the land known as Scrapsgate Open Space and Playing Field at Minster-on-Sea as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

13. Application to register land at Duncan Down, Whitstable as a new Village Green

(Item 4)

(1) The Commons Registration Officer briefly introduced the report, explaining that she had concluded that the user evidence demonstrated that the site had been used by local residents without challenge for recreational purposes for a period in excess of 20 years and that all the legal tests for registration had been met. She therefore recommended that the land in question should be registered as a Village Green.

(2) Mr Ashley Clark, the applicant addressed the Panel. He said that this was the third Village Green application at Duncan Down, and that registration would ensure that the overall size of the Village Green would be 52 acres – one of the largest in the Country.

(3) Mr Clark added that the Friends of Duncan Down had installed a footbridge across the brook in order to improve access and to enable the site to be tidied up. There had been an objection from a local resident to this activity. Once the land was registered as a Village Green, its status would be regularised and it would be properly maintained. The user evidence clearly demonstrated that the land had been used for lawful sports and pastimes for longer than the required period – so it was entirely appropriate that registration should take place.

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

(5) RESOLVED to inform the applicant that the application to register the land at Duncan Down in Whitstable as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

14. Application to register land known as Chaucer Field at Canterbury as a new Village Green

(Item 5)

(1) Members of the Panel visited the application site before the meeting. This visit was attended by the applicant, Mr Richard Norman; representatives from the University of Kent (the landowners); Mr G K Gibbens (the local Member) and some 25 members of the public.

(2) The Commons Registration Officer introduced the application which had been made under Section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 262 user evidence questionnaires together with detailed statements of use from the applicants, photographs, a map showing the locality, a newspaper article and a list of facts and figures relating to St Stephen's ward in the city of Canterbury. Letters of support had also been received from 85 local residents and students at the University.

(3) The Commons Registration Officer said that the University of Kent as the landowner had objected to the application. They had claimed that use of the land for lawful sports and pastimes had not been by a significant number of residents of the locality; that use of the site had been with permission; and that such use as had occurred had been confined to public footpaths and "desire lines".

(4) The Commons Registration Officer then said that it was the University's contention that signs had been erected at some point between November 1989 and April 1990 at each entrance to the University (including Chaucer Field). These had stated that the land was private property and that access was by way of a revocable licence. Since then, these signs had often become illegible, but had also been replaced from time to time. The University also believed that the land was unattractive and unsuitable for lawful sports and pastimes as much of it was densely covered in trees, whilst other parts had been used to take a hay crop.

(5) The Commons Registration Officer then referred to Appendix D of the report which contained 11 statutory declarations from current and former University employees. Their evidence was that notices had been in place at various times (explaining that use was by revocable permission) and that the land was mainly used as a short cut to and from the University. Any other use (such as by dog walkers) had been in exercise of existing rights of way over the application site.

(6) The Commons Registration Officer went on to consider the legal tests, each of which had to be met in full for registration to take place. She explained that the task for the Panel was to consider whether it could be shown that a significant number of the residents of a locality or of any neighbourhood within a locality had indulged as of rights in lawful sports and pastimes on the land for a period of at least 20 years.

(7) The first test was whether use of the land had been as of right. It was agreed by all parties that use of the land had not been by force or stealth. However, it was far more difficult to evaluate whether it had been with permission (and therefore "by right"). A number of the user evidence questionnaires had been submitted by students and employees of the University. It could be persuasively argued that their

use of the site enjoyed implied permission as the University would have no reason to challenge it.

(8) There was a dispute between the applicants and the landowner over the effectiveness of the Notices, which the University said it had erected in 1990. The evidence given by objectors in Appendix D indicated that they had been visible and replaced from time to time. The applicants, on the other hand, did not accept that these Notices had been sufficiently visible at any point during the qualifying period (beginning in 1991) to indicate to users of the site that this use was with permission. The Commons Registration Officer said that this conflict in evidence could only be clarified through the mechanism of a non-statutory public inquiry, where the claims and counter-claims could be tested.

(9) The Commons Registration Officer then said that the same thing could also be said in respect of evidence given by users about the type of use. For instance, many people had claimed to have walked or dog-walked on the land. It was not clear whether these activities had taken place on the footpaths and linear rights of way (which would have been “by right”) or more generally on the land as a whole.

(10) The Commons Registration Officer therefore said that she would not be in a position to conclude whether use of the land had been “as of right” until the evidence in respect of the Notices and walking areas had been examined in detail.

(11) The Commons Registration Officer then turned to the question of whether the land had been used for lawful sports and pastimes. The University claimed (in opposition to the user evidence) that the only activities on the land had been those in relation to the footpaths and linear rights of way. They disputed that there had been such activities as picnicks or games. This was another question which would need careful examination.

(12) The Commons Registration Officer went on to consider whether use of the land had been by a significant number of inhabitants of a particular locality or neighbourhood within a locality. The applicants had specified the City of Canterbury as the locality and the four neighbourhoods of the St Michael’s Road/Salisbury Road Estate, the Harkness Drive estate, the Whitstable Road/St Thomas Hill area and the Roper Road area. It was likely that at least one of these areas would meet the neighbourhood criteria. Use seemed to be by a sufficient number of people for it to be classified as “significant.” This conclusion was still a tentative one, as it would depend on the Inspector’s findings in respect of the type of use and the “as of right” questions.

(13) The Commons Registration Officer said that the application had been well made within the two year grace period set out in Section 15 (3) of the Commons Act 2006. The site had also clearly been used for recreational purposes throughout the 20 year period – albeit that the question of whether this use qualified for the purposes of registration remained to be clarified.

(14) The Commons Registration Officer concluded her presentation by saying that she was recommending reference to a non-statutory Public Inquiry as this was the most appropriate way to resolve the disputes in evidence and reach a sound decision.

(15) The Panel Members indicated that, having read the papers and heard the presentation from the Commons Registration Officer, they were strongly minded to agree to hold a non-statutory Public Inquiry. The Chairman therefore asked all parties whether they still wished to address the Panel and, if so, to consider whether they needed to go into great detail.

(16) Mr Richard Norman addressed the Panel on behalf of all the applicants. He said that he lived in St Michael's Place and had been a Professor of Philosophy at the University until 2006. He then outlined the applicants' views on each of the tests.

(17) Mr Norman said that it was the applicants' contention that there was a huge body of evidence to demonstrate that the site had been used for lawful sports and pastimes and that this use had not been confined to use associated with the public rights of way. It therefore followed automatically that this use had been by a significant number of inhabitants of a particular locality or neighbourhood in a locality. It was uncontested that this use had continued up to March 2011 and that the application had been made well within the required two year grace period. Use had clearly taken place for well over the specified twenty year period.

(18) Mr Norman then said that there was no question of the site having been used by force or secrecy. The question that remained to be answered was whether use had been with permission. The signs which Members of the Panel had seen that morning were irrelevant as they had taken erected after the qualifying period. Those signs which had been put up in 1989/90 before the qualifying period had started had become illegible and had deteriorated because they had not been maintained. It was therefore contended that the landowners had acquiesced in "as of right" use. The applicants would be providing the Public Inquiry with photographic evidence to conclusively demonstrate this point.

(19) John Karras QC spoke on behalf of the landowner. He said that the University was in full agreement with the recommendation in the report. The landowner was not claiming that there had been no recreational use at all. The questions were whether this use could be claimed to have been by a significant number of people from a locality or neighbourhood within a locality; and whether the signs had at times been sufficiently visible to demonstrate that use was with permission. There was insufficient evidence available to the Panel at this time to enable it to reach a fully informed conclusion, and there needed to be independent scrutiny before it could do so.

(19) Mr Karras went on to say that the evidence given by Mr Brearley in Appendix D strongly suggested that the permissive signs had been in place since 2002. Mr Czarnomski had given evidence to say that there had been signs in place at every entrance since 2005.

(20) Mr Karras said that he had asked on behalf of the landowner for unredacted copies of the user evidence and was pleased to say that he had received an assurance that these would be made available for the Public Inquiry.

(21) Mr G K Gibbens (Local Member) said that he had no involvement in making the application. He had, however, personally used the area for a 13 year period, particularly for dog walking.

(22) Mr Gibbens continued by saying that he had been able to wander at will on the land without fear of challenge and with no restriction at all. Many people had given evidence that they had carried out other lawful sports and pastimes apart from walking. This included tobogganing in the part of the site known as the “bomb crater” (although he had personally never participated in this particular activity). Use of the site had been by the residents of St Stephen’s Ward in Canterbury. Many people claimed to have used the site for 40 years. There was no doubt, too that the twenty year test had been met and that the application had been made within the grace period prescribed by Law. He asked the Panel to agree to the recommendation to hold a non-statutory Public Inquiry.

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

(24) 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 St Mary The Virgin Church Hall, The Church Yard, Ashford TN23 1QG on Monday, 24 September 2012.

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

ALSO PRESENT: Mr J N Wedgbury, Mr J Hann and Inspector A Hobbs

IN ATTENDANCE: Mr G Rusling (Public Rights of Way Operations Manager) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

15. Proposed Gating Order at Public Footpath AU79, St Mary's Church Yard Passage at Ashford *(Item 3)*

(1) Members of the Panel held a site visit prior to the meeting. They inspected Church Yard Passage and Church Yard, noting the location of the proposed gate. They also walked the alternative route along the High Street, Bank Street and Tufton Street. This site visit was attended by Mr J Hann from the Ashford Community Safety Unit, Mr A Buchanan, Mr J Adey and Rev C Preece (local residents) and Cllr H Apps.

(2) The PROW Operations Manager said that since The Highways Act (Gating Orders) (England) Regulations 2006 had come into force, the County Council had been given the power to make, revoke or vary gating orders. This power could be exercised in order to prevent crime or antisocial behaviour on or next to a highway if the County Council was satisfied that premises adjoining or adjacent to the highway were affected by and facilitated persistent crime or anti-social behaviour.

(3) In 2010 the Ashford Community Safety Unit had submitted an application for a Gating Order in respect of Public Footpath AU79 Ashford Church Yard. This application could not, however, be taken forward as the proposal would have had the effect of preventing access to a number of dwellings. The Community Safety Unit had therefore brought an amended proposal forward, addressing this flaw.

(4) The PROW Operations Manager then said that Public Footpaths AU79 and AU80 formed a complete circuit of St Mary's Church Yard in the centre of Ashford, abutted by residential properties, businesses, a community hall and St Mary's Church. These footpaths linked Tufton Street with the High Street and were well-used convenient routes passing through a conservation area of high amenity value. There were two principal means of entry and exit to the Church Yard from Tufton Street and one point of entry/exit to the High Street. There were also private means of entry/exit to the Church Yard - most notably from the Bull Yard on the western side of the Church Yard, abutting Public Footpath AU79.

(5) The PROW Operations Manager then explained his view that there were suitable alternatives. The footways of Tufton Street and Bank Street and the pedestrianised High Street provided links between the same areas of the town centre. They were well lit with good natural surveillance and primarily passed business properties rather than residential properties. They were of a similar gradient and were equally convenient. In the very worst possible case where a person in the High Street wished to access a property in the Church Yard at a time the gate was locked, an additional distance of 400 metres would be added to a journey. The walking distance would be considerably less than that in most cases.

(6) The PROW Operations Manager continued by saying that in order for a Gating Order to be made, the crime and anti-social behaviour in question needed to be enduring, constant and repeated. In this case, the reports included banging on doors and windows, criminal damage, urination through letter boxes and against residential properties, and general disturbance. Temporal analysis indicated peaks in criminal and antisocial behaviour during Friday and Saturday nights. He believed that there was a clear link between the movement of patrons between licensed premises and the worst of the crime and anti social behaviour.

(7) The statistics indicated that reported crime had continued over a number of years despite the introduction of measures to reduce it. Policing and practical measures had included the introduction of additional street lighting, signage and CCTV in Church Yard Passage as well as targeted policing, including increased foot patrols and plain clothes patrols. These measures had had no demonstrable lasting impact in reducing criminal and antisocial behaviour in the area.

(8) The PROW Operations Manager went on to say that many residents had written in support of gating the footpath, citing many instances of crime and anti-social behaviour and the adverse impact that it had had on their quality of life. Their ability to take practical steps to reduce the crime and anti-social behaviour was limited to a considerable extent as their properties directly abutted the footpaths. Their ability to alter doors and windows was also limited due to planning constraints reflecting the area's conservation area status.

(9) After briefly explaining how concerns raised during informal consultation had been accommodated, the PROW Operations Manager moved on to consideration of the five objections to the draft Gating Order. The first of these was that installation of the gate in the early hours of Saturday and Sunday morning would have the effect of trapping anti-social people, who might then attempt to climb the gate and otherwise disturb residents. It could even lead to the area becoming a cul-de-sac, encouraging drug use and sexual activity. In response, the PROW Operations Manager said he believed that by installing a gate and locking it on the days and times indicated, a pattern of movement would be broken or interrupted between the licensed premises and the crime and anti-social behaviour associated with them. During the first weeks, resources would be dedicated to patrolling the area to inform route users about the gating of the path. Signs would also be placed at entrance points.

(10) The second objection was that the presence of a locked gate would prevent evacuation in the case of emergency. The PROW Operations Manager's response to this concern was that the gate would be open most of the time; that the emergency services would hold a key to the gate and that other access points were also available.

(11) One objector had objected to what was mistakenly believed to be a permanent closure. Another had claimed that notices were not available at stated locations or the Gateway. The PROW Operations Manager affirmed that Notice of the Gating Order had been advertised in the local press and on site. Copies of the relevant documents had been placed on deposit at both the Ashford Borough Council Civic Centre and at the Kent Highways and Transportation Office at Henwood Road Ashford.

(12) The final objection was that there would need to be a firm ongoing commitment to locking and unlocking the gate. The PROW Operations Manager confirmed that this would be accommodated within existing contracts for the management of facilities in the town centre.

(13) The PROW Operations Manager concluded his presentation by saying that, having carried out an Equalities Impact Assessment and taken the supportive views of the public and Police fully into account, he was recommending that the Panel should make the proposed Gating Order.

(14) The PROW Operations Manager responded to questions from Panel Members by saying that periodic review of every Gating Order in operation was required. He would be responsible for instigating a review in this case, reporting either to Regulation Committee or to a Panel as appropriate.

(15) The Chairman asked whether there was risk that the effect of making an Order would be to displace the crime and anti-social behaviour. Inspector A Hobbs from Kent Police replied that there was a possibility of displacement. There would need to be education for the local people before the gate was installed and a policing presence on site immediately afterwards. The purpose of the proposed Gating Order was to protect the local residential properties. The most likely venue for any possible displacement would be the Bull Yard, which did not have any.

(16) Mr A Buchanan (local resident) said that he had lived in one of the houses in Church Yard that had borne the brunt of crime and anti-social behaviour for a number of years. His windows were single-glazed, and he was not allowed to install shutters because of the area's Conservation status.

(17) Mr Buchan then described some of the behaviour he had personally experienced. He said that someone had head-butted his window, another person had urinated through it and then attempted to kick open his front door. There had been bottle fights and snowball fights as well as heavily drunken and drug-affected behaviour. This, he said happened all through the week between the hours of 9 pm and 2.30 am.

(18) Mr Buchanan concluded his remarks by saying that the gate in the north would prevent the majority of people from entering the area after visiting bars in that direction. The problems from the south did not tend to begin until 1.30 am.

(19) Mr J Adby (local resident) said that he had lived in Church Yard since 1995. The problems had begun in 2007 once nearby local bars had opened. He had presented a petition to Ashford BC in 2008 requesting improvements in street

lighting, CCTV, an improved Police presence and the installation of gates. *(A copy of this petition was presented to the Panel).*

(20) Mr Aaby said that he had seen people selling and using drugs and that his windows had been smashed on three occasions. Food and cigarette butts had also been stuffed through his letterbox.

(21) Mr Aaby asked the Panel to make the Gating Order as Church Yard was a wonderful place to live when such behaviour did not take place. He agreed with the proposed location of the gate and agreed that the initial period should be for a year.

(22) Mr D Smyth said that he had in the past been the local County Councillor. He had been made aware of the problem in 2007. In his view, the Gating Order should be seen as the first of a series of necessary measures rather than as the cure itself.

(24) Rev Preece from St Mary's Church said that he questioned whether the proposed Gating Order would solve the problem. He asked the Panel to bear in mind that Churches were increasingly being targeted by thieves. If the northern part of the site were to be gated off, criminals would know that they would not be disturbed from that direction. He could nevertheless fully understand why the Order was being proposed and strongly supported a review in a year's time if the Order was made.

(25) Mr J N Wedgbury (Local Member) said that he was certain that the installation of the gate would be effective, as criminals always liked to have more than one escape route. If the Order was made, the people who currently carried out anti-social activities in Church Yard would take a different route.

(26) Mr C Cooper (Local resident – Save Ashford Church) said that local residents' lives had been blighted for a number of years. Closing all the gates around the churchyard would keep it safe from burglars.

(27) Inspector Hobbs said that she believed the local residents were living in fear. By taking the necessary action on Friday and Saturday nights, the fear level would be reduced.

(28) Inspector Hobbs then said that the Police had received 53 calls in 2011 from Church Yard. This was far higher than any other part of Ashford. Most of this related to anti-social behaviour such as banging on windows and doors, urinating, screaming, shouting and swearing, drug and alcohol use and threatening behaviour. In contrast, the number of crimes had been relatively low. There had been assaults, burglaries, criminal damage and violent disorder. In 2012, the number of crimes had already risen (including 5 crimes in relation to the Church).

(29) Inspector Hobbs continued by saying that most of the crimes and anti-social behaviours arose when people took a short cut between the Phoenix, the Swan in Tufton Street to the south and Wetherspoons and the Liquid Night Club to the north. The Ashford Community Safety Unit and the Police were very supportive of the proposed Order and would do what they could to make it work.

(30) Mr J Hann (Ashford Community Safety Unit) said that efforts to contain the problems in Churchyard had included Police Patrols, increased street lighting, signage, CCTV. The public houses had also been very co-operative and helpful. No one wanted to create a gated community, but the proposed Gating was the best

option available. It would need a supporting campaign of awareness raising and publicity.

(31) Mr Hann then said that the problems in Church Yard had arisen after the Phoenix opened in 2006. People had seen it as an easy short cut between the north and south. He believed that if the gate was installed, it would very quickly change people's perceptions of the route that would need to be taken. He believed that it would be right to review the Order one year after the installation of the gate.

(32) On being put to the vote, the Panel voted by 4 votes to 0 to make the Order. It specified that there should be a review commencing a year after installation of the gate.

(33) RESOLVED that:-

- (a) the Gating Order be made; and
- (b) the Gating Order be reviewed one year after installation of the gate, and revoked, amended or continued at that time as appropriate.

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REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Hythe Town Hall, High Street, Hythe CT21 5AJ on Wednesday, 21 November 2012.

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

ALSO PRESENT: Mr T Prater

IN ATTENDANCE: Mr C Wade (Countryside Access Principal Case Officer), Ms 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 Sandgate Escarpment in the parish of Sandgate as a new Village Green *(Item 3)*

(1) The Panel Members visited the application site prior to the meeting. This visit was also attended by Mr T Prater (Local Member), some 15 local residents, the landowner, Mr G Forge and his representative, Mr R Stevenson.

(2) The Commons Registration Officer introduced the application which had been made under section 15 of the Commons Act 2006. She confirmed that all the required consultation arrangements had been complied with before explaining that the original application had been amended by the applicant to exclude the areas owned by the MoD. The revised application area was shown on the map at Appendix C to the report.

(3) The Commons Registration Officer then said that 13 letters of support for the application had been received following consultation, together with 25 standard response form letters. Further support had been received from Shepway DC and Sandgate PC as well as Mr Prater, the Local Member.

(4) The Commons Registration Officer then set out the grounds for objection received from John Bishop Associates on behalf of Mr G Forge, the landowner. These were that the user evidence was insufficient to show that the land had been used by a significant number of residents of the locality; that use had been restricted to the Public Footpaths that crossed the application site; that parts of the land had been inaccessible to the public during all or part of the qualifying period; that prohibitive notices put up by the MoD rendered use of the site contentious; and that Military Byelaws provided a right of access for the public at large, rendering use of the site "by right" rather than "as of right."

(5) The Commons Registration Officer then explained that the task for the Panel was to consider whether it could be shown that a significant number of the residents of a locality or of any neighbourhood within a locality had indulged as of right in lawful

sports and pastimes on the land for a period of at least 20 years up to the date of application. This meant that the Panel had to consider whether every single test contained in section 15 of the Commons Act 2006 had been met.

(6) The first test was whether use of the site had been “as of right”; i.e without force, secrecy or permission. The landowner had produced a copy of the Shorncliffe and District Military Byelaws 1976 which gave the public permission to use all parts of the military lands which were not specially enclosed. Further research had, however, revealed that the byelaws had been made in exercise of the powers contained in the Military Lands Act 1892. This Act had specified that any byelaws made under its provisions had to be made publicly known locally. No evidence had been produced to demonstrate that this had been the case. Consequently, the existence of the byelaws could not be relied upon as proof that use had been with permission.

(7) The Commons Registration Officer turned to the question of use of the Public Rights of Way. She said that they had been provided in 1992 by the MoD and that there were also a number of defined tracks which were used in the same way (although not recorded as such). She said that the *Laing Homes* case had established that any use that was in exercise of the Public Rights of Way or otherwise had the appearance of being a public rights of way type use could not also be used to confer “as of right status” on land which was the subject of a Village Green application. In this instance, most of the evidence indicated that the claimed use had been walking. This, together with the generally overgrown nature of the site (apart from the clearing which Members had seen before the meeting) indicated that the claimed use had largely been restricted to walking along a handful of defined, linear tracks rather than general wandering across the whole of the application site.

(8) The Commons Registration Officer then examined the question of whether use had been “with force”. She explained that signs at the western end of the application site had been erected by the MoD (probably in the 1970s). These read: “Danger Military Ranges Keep to the Path” and “MoD Property Danger Keep Out.” This indicated that use of the site (especially in the earlier part of the application period) had been contentious, in clear defiance of the landowner’s wishes, and therefore “with force.”

(9) The Commons Registration Officer summed up her conclusions on the test by saying that use had been with force in some areas and by an existing right near the footpaths. Consequently, it had not been “as of right.”

(10) The Commons Registration Officer went on to consider whether use of the land had been for the purposes of lawful sports and pastimes. As the majority of claimed use had been walking (which was an activity undertaken by the right to use the Public Footpaths) she explained that this use could not be identified as a lawful sport or pastime for the purposes of a Village Green application. Several of the witnesses had referred to use of the land as a shortcut to Sandgate High Street which was not a qualifying use. Blackberrying had taken place from the footpaths and was therefore associated with use of the public rights of way. Again, the heavily overgrown nature of the application site and steep incline made large areas of the application site inaccessible for the purposes of lawful sports and pastimes.

(11) The Commons Registration Officer then examined the test of whether use had been by a significant number of inhabitants of a particular locality or neighbourhood

within a locality. She said that the applicant had specified Sandgate as the locality. Sandgate PC was a legally recognised administrative unit which meant that part of the test had been met.

(12) The term “significant number” simply meant whether there had been enough users to demonstrate that the land was in use. The number of people who had claimed to have used the land had certainly been sufficient for that purpose. However, this had to be set in the context of her comments about “by right” use of the Public Footpaths.

(13) The Commons Registration Officer said that the final two tests were whether use of the land had continued up to the date of application (June 2011); and whether this use had taken place over a period of twenty years or more. Whilst it was probable that the use had continued up to this point, the application date was June 2011. The user evidence, however, stopped at summer 2010. This meant that there was a one year gap when no one had claimed to have used the site. It was not open to the Authority to simply assume that the use had continued.

(14) The Commons Registration Officer then considered the question of whether any individual parcel of land was capable of registration. In her judgement none of them were because the western part of the site contained the “keep Out” signs erected by the MoD; the reservoir was unusable; the land between the Martello Towers was too overgrown for lawful sports and pastimes to have taken place; the allotment areas were inaccessible; and the northern spur unusable. This left the clearing area by the pillbox where there was insufficient evidence to demonstrate that use had been by a significant number of people from the locality.

(15) The Commons Registration Officer concluded her presentation by saying that the absence of user evidence for the last year of the claimed 20 year period was itself a conclusive reason to reject the application. Whilst this omission could be rectified, there was little point in doing so as the application failed to meet all the necessary tests to enable registration of the application site to take place in whole or in part.

(16) Mr David Cowell addressed the Panel as the applicant. He said that the tree covered hill sitting above the village of Sandgate was (with the coastline) an essential part of the geophysical features that defined the very essence of the community and its environment. It was the heart, soul and lungs of the community.

(17) Mr Cowell went on to say that he had applied to Kent County Council to register the land as a Village Green and had submitted evidence showing that a significant number of the inhabitants of Sandgate had indulged in lawful sports and pastimes on the land for a period of at least 20 years and that this use had continued ‘as of right’.

(18) Mr Cowell then addressed the areas of disagreement that he had with the conclusions of the report. He said that the report’s conclusions failed to take into account established case law with regards to contentious usage and the question of restricted access due to vegetation. He said that he would do this by examining the individual conclusions set out in paragraph 54 of the report.

(19) The first officer conclusion was that the use of the western end of the application site (beyond Martello tower 7) was in defiance of the clearly displayed

prohibitive notices erected by the MOD and that such use was contentious and could not be 'as of right'. Mr Cowell referred to the 2010 village green appeal *Betterment Properties (Weymouth) Ltd v Dorset County Council and Taylor*. The High Court had considered the effect of contentious use in the round, taking into account the effect of signs erected by the landowner, warnings off, and breaking down of fences. The judge had reviewed the law as to contentious use and had adopted the following test:

“Are the circumstances such as to indicate to the persons using the land, or to a reasonable person knowing the relevant circumstances, that the owner of the land actually objects and continues to object and will back his objection either by physical obstruction or by legal action? For this purpose, a user is contentious when the owner of the land is doing everything, consistent with his means and proportionately to the user, to contest and to endeavour to interrupt the user.”

(20) Mr Cowell said that the MoD had stated that they did not even know when the signs were erected. He asked the Panel to agree that the usage was not contentious because the owner of the land was not doing everything, consistent with his means and proportionately to the user, to contest and endeavour to interrupt the user during the twenty year period.

(21) The second officer conclusion was that the reservoir adjacent to Martello tower 7 was physically inaccessible and incapable of being used for lawful sports and pastimes, and that this had been the case throughout the relevant period. Mr Cowell said that he did not understand the relevance of this point as the reservoir was a covered water tank, with the land above it being accessible. This land had been used as of right by a significant number of people for the required twenty year period.

(22) Mr Cowell then said he would take the third, sixth and seventh officer conclusions together as they all related to vegetation and accessibility. These were:-

- Firstly, that the strip of land between the Martello Towers was densely covered with vegetation with access to it being largely restricted to walking along the Public Footpath, in exercise of an existing right and not 'as of right';

- Secondly, that the northern spur of the application, west of Military Road, consisted of a single defined path through a heavily vegetated area; such use being consistent with a rights of way type use rather than a wider recreational use; and

- Thirdly, that there was evidence that the remaining area of land had been used by children on rope swings or playing in the pill box, but that the area also included a steep slope and some densely vegetated areas which limited the scope of other recreational activities on this area. The evidence provided on the user evidence forms was non-specific (as it related to the whole of the application site) and, whilst there was some physical evidence of use, it was not clear that this area had specifically been used by a significant number of the local residents for recreational purposes.

(23) Mr Cowell said that (as the owner of a piece of land on the lower escarpment) he could assure the Panel that nature very quickly reclaimed what it considered its own and what was visible on this day was not what it would have looked like during the previous month or the previous year, let alone over the twenty year period.

(24) Mr Cowell said that, in the *Trap Grounds* village green application in Oxford which went before the House of Lords in 2006, the land was described as:

"..... nine acres of undeveloped land in North Oxford.....The other two thirds [the scrubland]...are much drier and consist of some mature trees, numerous semi-mature trees and a great deal of high scrubby undergrowth, much of which is impenetrable by the hardiest walker....Off this circular path there are numerous small paths through the undergrowth. Some peter out after a few yards. Some lead to small glades and clearings. I estimate that a total of about 25% of the surface area of the scrubland is reasonably accessible to the hardy walker. Not idyllic."

In delivering the judgement in favour of the village green application, Lord Hoffman had quoted Mr Vivian Chapman, a member of the Bar and an expert in the law of commons and greens, who had said:

"The city council argue that the scrubland is now so overgrown that the majority of it is inaccessible and that this in itself precludes registration as a green. As noted above, my estimate is that about 25% of the total area is reasonably accessible, the rest consisting of trees and scrub. In my view, the question whether land has become a town or village green cannot be determined by a mathematical assessment of the amount of the land which is open to recreation. Where the recreational use is informal and consists of activities such as walking, with or without dogs, children's play, exploring and watching wild life, I do not see why much more densely vegetated land should not be capable of being subject to recreational rights, either by custom or prescription. In my view, it is necessary to look at the words of the statutory definition and to ask whether the scrubland, considered as a whole, is land which falls within that definition. In my view, the evidence proves that the recreational use of the scrubland is, and has been over the relevant 20 year period, sufficiently general and widespread, by way of use not only of the main track but also of minor tracks, glades and clearings, to amount to recreational use of the scrubland viewed as a whole."

(25) Mr Cowell said that he had visited the escarpment on the previous day and estimated that between 40% to the west and 80% to the east of the escarpment was useable. He therefore asked for the conclusion in the *Trap Ground* case to be applied to the Sandgate escarpment.

(26) The fourth officer conclusion was that the area surrounding Martello Tower 6 consisted of a Public Footpath and that such use was in exercise of an existing right (or was an activity associated with that right, such as blackberrying) and not 'as of right'. Mr Cowell said that although the importance of this land had been recognised by the establishment of rights of way, his evidence showed that the land in its entirety was used over the twenty year period. The rights of way merely provided some, but by no means the only ways of access.

(27) The fifth officer conclusion was that the area of land on the eastern boundary of the application site included some allotments which would not have been available for recreational use during the relevant period. Other parts were heavily vegetated and inaccessible. Mr Cowell said that the existing allotment had been excluded from his application and that his earlier comments applied to the reference to vegetation and inaccessibility. The Panel had a discretionary right to exclude the old, defunct

allotment land if it so wished.

(28) Mr Cowell then turned to the question of the twenty year rule, which the officer report suggested constituted a “knock out blow”. He said that he had explained in his application why there had been a delay in submitting the application. This explanation had been that a meeting had been held in August 2010 in the light of the likely challenge by the owner of the land, who had purchased it in 2004/5 from the MoD. This meeting had been attended by the owner, (who had called the meeting) who had made certain undertakings to allow the Sandgate community rights to a large part of the land and Martello Tower no 6. This had been confirmed in the minutes of that meeting (with full agreement from all parties). These promises had not materialised despite the Village Green application being delayed in good faith.

(29) Mr Cowell continued by saying that although the collection of evidence had started in mid July 2010, he had delayed filing the application (much against the advice of other residents) because he was awaiting the delivery of the promise from the landowner, which had not subsequently been forthcoming. He said that it was quite apparent that a new questionnaire would achieve the required outcome and asked for natural justice to prevail on this question or for the Panel to use its discretion to allow the evidence to be collected again.

(30) Mr Cowell concluded by asking the Panel to consider the legal tests in the light of the information he had provided. He believed that this showed (beyond the required balance of probabilities) that usage “as of right” had taken place for over twenty years. Granting village green status would therefore be a totally safe outcome.

(31) The Commons Registration Officer commented on Mr Cowell’s presentation by saying that whilst it was a matter of judgement for the Panel, it had been her view that signs reading “Danger Keep Out”, etc gave a sufficient indication that use of the land was against the landowner’s wishes and therefore contentious. In relation to the changing nature of the vegetation, she also said that she had visited the site in May and had found it more overgrown than at present. She showed the Panel photographs of the site taken during this visit and then commented on Mr Cowell’s views on the *Trap Ground* case by saying that that particular judgement had been made over an application where there had been no public footpaths. This had meant that there had been no confusion on the question of “by existing right” in that respect.

(32) Mr Robert Stevenson from John Bishop Associates spoke on behalf of Mr Forge, the landowner. He said that Mr Forge completely supported continued use of the land by the community and did not wish to restrict local use of the site in any way. Activities such as dog walking would continue as before. He added that the application could not succeed because there was insufficient evidence for it to do so. The application lacked credibility and integrity in that parcels of land had been omitted from it, whilst areas such as the reservoir (which, contrary to the applicant’s assertions, was not a covered tank and was extremely dangerous) and the private allotments (which were fenced off) had not been used at all during the 20 year period. He also asked the Panel to note that the vegetation it had seen that morning was less than there had been in the summer.

(33) Mr Stevenson then said that he disagreed with the officer conclusions on the Military Bylaws. He believed that the reason that it could not be proved that consultation had taken place was that the MoD was unlikely to have kept records of

its publicity arrangements. He was of the view that the legal presumption that all things had been done correctly should prevail.

(34) Mr Stevenson turned to evidence from two witnesses which had not been included with the papers. One of them had never seen anyone venturing away from the footpath. The other, Mr Newcombe had been (amongst other things) a Wildlife Management Consultant. He had carried out professional surveys of flora and fauna on the land. He had never seen anyone deviate from the footpath except for the clearing area by the pillbox.

(35) Mr Forge (Landowner) confirmed that he had purchased the site in 2005 with the intention of restoring Martello Tower No 6. He was aware that local people were concerned that developments such as were taking place to the east of the site and had therefore sought to reassure them by offering land at both entry points to the Parish Council.

(36) Mr Prater (Local Member) spoke in favour of the application. He said that he believed the "Keep Out" signs put up by the MoD in the 1970s were not a significant indication that use of the land was still contentious in the 1990s. He asked the Panel to bear in mind that the MoD was very thorough when it really wished to prevent access.

(37) Mr Prater went on to say that there were very clear precedents for registering land as a village green even if parts of it were inaccessible.

(38) Mr Prater presented evidence from Mr Finnis, the local Scout Group leader who had confirmed that the site was used three times each year by his Group for backwoods activities outside the scope of walking the footpaths.

(39) Mr Prater asked the Panel not to treat the absence of user evidence for the final year of the application as a reason for turning the application down. The Panel would surely accept another set of questionnaires if the other tests were met.

(40) In respect of Mr Prater's last point, the Chairman clarified that the Panel had no legal option but to consider whether each individual test had been met. The Commons Registration officer added that the user evidence difficulties could have been rectified prior to the Panel meeting if there had been a likelihood of the application succeeding. This, however, had not been the case.

(41) In response to a question from the Chairman, Mr Forge said that the Scout Group was welcome to continue using the site.

(42) The Chairman allowed Mr Ewan Williamson, a local resident to address the Panel. Mr Williamson said that he was the president of The Sandgate Society and had also been a Security Specialist. He also regularly walked in the Sandgate escarpment. He said that the MoD signs had been in place for 25 to 30 years, which was before the Orders confirming the Public Footpaths had been made to compensate for others which had been closed because of a stated IRA threat. The signs should have been removed once this had happened, and they were only still there because of an oversight. He went on to say that the site was widely used, including by children.

(43) The Commons Registration Officer commented that the effect of the signs remained as a statement that use was contentious.

(44) Mr R A Pascoe moved, seconded by Mr S J G Koowaree that the recommendations of the Head of Regulatory Services be agreed. In moving the motion, Mr Pascoe clarified that he accepted all the conclusions of the report with the exception of those relating to the significance of the gap between the user evidence being compiled and the application being made.

(45) On being put to the vote, the motion set out in (43) above was carried unanimously.

(46) RESOLVED that the applicant be informed that the application to register land known as the Sandgate escarpment in the parish of Sandgate as a Village Green has not been accepted.

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Guildhall, Market Place, Faversham ME13 7AG on Wednesday, 21 November 2012.

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

ALSO PRESENT: Mr T Gates

IN ATTENDANCE: Mr C Wade (Countryside Access Principal Case Officer), Ms S Coventry (Public Rights Of Way Officer (Definition)) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

17. Public Footpath ZF5, Faversham

(Item 3)

(1) The Panel Members visited the site of the application prior to the meeting. They walked the two proposed routes under discussion. The visit was also attended by representatives from Faversham TC and some 20 local residents.

(2) Two additional papers had been made available to the Panel and interested parties prior to the meeting. These were Appendix B to the report, which showed the route proposed by the Faversham Residents Association as well as a letter dated 18 July 2012 from the Faversham Residents Association objecting to the Faversham Town Council proposal.

(3) The Chairman opened the meeting by explaining that the Panel's only remit was to consider the two routes under discussion. No other issues would be considered as the Panel wished to ensure that it made its decisions unencumbered by issues that were irrelevant to the matter in hand.

(4) The PROW Officer introduced the report and its recommendations. Two applications had been received in respect of Public footpath ZF5 at Faversham. The first of these (set out at Appendix A to the report) had been made by Faversham TC to divert the existing route along a similar route to that which currently existed but with detours to avoid the properties which it ran through.

(5) The second application (set out at Appendix B) had been made by the Faversham Reach residents Association. It was in effect a diversion which took the path along the front of Faversham Reach, avoiding the Marina along Faversham Creek. For legal reasons, it needed to be treated as an Order under Section 118 of the Highways Act 1980 to extinguish part of Public Footpath ZF5 and a complementary Order under the same Act to create a new public footpath.

(6) The PROW Officer then set out the case for the proposed diversion. She did so by considering the six criteria set out in the Highways Act 1980. The first of these

was whether it was expedient to divert the path in the interests of the public. In her view, it was expedient because the footpath was currently obstructed by a number of residential dwellings, landscaping and a concrete wall. People using the path through Faversham Reach were forced to make a detour away from the creek. She reminded the Panel that the public already had the right to use the footpath through Faversham Reach and that the diversion would not create any new rights. The lack of access between Crab Island and Faversham Reach meant that the public did not necessarily exercise its right to deviate from the line of the public footpath in order to avoid the houses, and therefore did not walk through Faversham Reach. Diverting the footpath would therefore not only open up the route by avoiding the obstructions that currently discouraged people from following its route; it would also provide a continuous creek side route for the public (a goal of the Faversham Creek Neighbourhood Plan).

(7) The PROW Officer said that the Town Council application also met the second criterion because the point of termination of the path would not be altered and would therefore be just as convenient to the public.

(8) The PROW Officer then considered the third criterion (whether the right of way would not be substantially less convenient to the public). She said that there would be a minimal increase in the length of the route from 198 to 230 metres. The majority of objectors had objected that it would be less convenient because it would involve using a ramp. She did not consider this to be the case because the large concrete wall between Crab Island and Faversham Reach was the only point at which the public was unable to exercise its entitlement to circumnavigate an obstruction. The ramp would have a gradient of 1 in 12, providing a gentle slope which would open up the path to all potential users including people with disabilities and parents with young children in buggies, in full compliance with the Equality Act 2010, and the BT Countryside for All Standards and Guidelines.

(9) The PROW Officer added that the kerb would be replaced by a drop kerb to assist those with limited mobility. It was also proposed to create a gap in the obstructing wall to remove safety concerns over the public coming into contact with large vehicles, and to remove the large, imposing pedestrian gate at Point L of the map at Appendix A.

(10) The fourth criterion was the effect of the proposed diversion on public enjoyment of the path as a whole. The PROW Officer said that public enjoyment would not be affected because the path would enable the creation of a continuous walking route along the whole creek and open up the path along Faversham Reach without creating any new health and safety concerns. She asked the Panel to bear in mind that the objections raise on health and safety and convenience grounds related to parts of the route which were already in existence.

(11) The PROW Officer said that the final two criteria were met because there would be no impact on other land served by the existing right of way and because no new rights would be created by the Order.

(12) The PROW Officer went on to say that some of the objectors had noted that the ramp was to be constructed in Crab Island which was a registered Village Green, and had questioned the legality of doing so. She responded to this concern by saying that legislation allowed works to be undertaken if they provided for the better

enjoyment of the Village Green. The erection of the ramp would ultimately provide the public with direct access from public footpath ZF5 onto the Village Green as part of the desired continuous creek side route.

(13) Another objection raised was that the overall cost to the public of the proposal should prohibit it from being considered as an option. The PROW Officer said that this was not a matter for the County Council to take into consideration when determining this application. All costs – including those associated with bringing the new route into a suitable condition would be borne by the applicant.

(14) The PROW Officer then said that she noted concerns that the proposal would add a public footpath through a private and quiet residential estate, increasing the number of instances of noise, reduced security and vandalism. Many were particularly concerned with the security of boats moored in the marina. However, the rights were already in existence, so it could not be claimed that the proposed diversion would cause any of these problems.

(15) The PROW Officer then referred to photographs of some recent vandalism where a hedge adjacent to another section of the public footpath had been set on fire. She said that it was important to remember that the County Council had a duty to assert and protect the public rights, including those rights through Faversham Reach. The nature of the obstructions to public footpath ZF5 currently meant that to make the public's rights available on the definitive line was practically impossible.

(16) Several objectors had raised concerns that the proposed diversion would impact on the value of their properties. The PROW Officer said that this could not be taken into consideration. Public rights already existed through Faversham Reach. She added that the five residential properties which had been built directly on the line of the public footpath could be considered to be blighted at this time.

(17) The PROW Officer next considered the case for the proposed extinguishment put forward by Faversham Reach Residents Association. This involved consideration of three criteria. The first of these was whether it was expedient to extinguish the path on the ground that it was not needed for public use. The applicants had submitted that part of public footpath ZF5 was not needed for public use because there was an alternative route running to the rear of Faversham Reach (along which the Saxon Shore Way was aligned) and that this, alternative, path has been used by the public for a significant number of years.

(18) The PROW Officer responded to this view by saying that objectors to the application had stated that the only reason for using the alternative route to the rear of Faversham Reach was that the definitive route had been obstructed by the residential dwellings and concrete walls. She quoted an objector as saying that they had therefore been "pushed away from the creek side alongside a high concrete wall, creating an extensive loop around industrial works to regain the creek side path."

(19) The PROW Officer then said that the majority of the objectors, including Swale BC, had stated that during all the consultation events held for the preparation of the Faversham Creek Neighbourhood Plan the most strongly supported initiative had been for a continuous circular path that allowed residents and visitors alike to walk around the entire head and basin of the Creek by the waters edge. She said it

was therefore clear that this section of the footpath was not only needed by the public but that there was also a great demand for it to be made available.

(20) The second criterion was the extent to which it appeared that the path would be likely to be used by the public. The PROW Officer said that due to the current obstructions and the lack of access between Crab Island and Faversham Reach, the public did not necessarily exercise its entitlement to deviate from the line of the public footpath and walk through Faversham Reach. An alternative route had been used by the public for a significant number of years, as a means of circumnavigating Faversham Reach

and the obstructions on the public footpath. The majority of the objectors had stated that although they did use the alternative route to the rear of Faversham Reach, this was only because they had felt forced to do by the current obstructions. They had pointed out that the alternative route was behind a concrete wall, and that for a quarter of its length, it was behind an industrial building, residential garages and the concrete wall. All of the objectors had expressed the desire to use the path were it to be open and available to the public.

(21) The PROW Officer asked the panel to note that there was no doubt that public rights existed over the alternative route even though it was not recorded on the Definitive Map and Statement as a public footpath. This had been acknowledged by nearly all parties.

(22) The PROW Officer confirmed in respect of the third criterion that the extinguishment of public footpath ZF5 would not have a negative impact upon land served by the right of way.

(23) The PROW Officer moved on to consideration of the Case for the proposed creation by Order of the public footpath. There were two criteria which had to be met. The first was the extent to which the path would add to the convenience or enjoyment of a substantial section of the public or convenience of persons residing in the area. She said that the proposed new route was currently used by the public, and had been for a considerable number of years. She therefore considered that the new route would undoubtedly enhance the convenience and enjoyment of the public and persons residing in the area. However, it did not represent addition to what was already informally available.

(24) As Faversham Reach Residents Association (the landowners) had stated it would defray any claims for compensation there would be no negative effect on the right of persons interested in the land when taking into account provisions for compensation.

(25) The PROW Officer summed up her presentation by setting out the recommendations contained in paragraphs 65 and 66 of the report.

(26) Mr David Simmons (Mayor of Faversham) spoke in favour of the Town Council application. He said it had long been the ambition of the Town Council to see a creek side walkway and that he considered that the route set out in Appendix A seemed to be the most acceptable route as it took Footpath ZF5 away from the five houses and required little work at either end. The creek side walk would also remain in place for a large portion of the route. The only affected parts of the footpath to be diverted would therefore be the sections which currently ran through the five houses.

(27) Mr Simmons went on to say that the Town Council's application was part of the Faversham Creek Streetscape Strategy which aimed to create a creek side footpath along the length of the creek. This Strategy had now been formerly endorsed by the Swale Joint Transportation Board. He therefore commended Appendix A to the Panel.

(28) Mr Andrew Osbourne addressed the Panel; in support of the Town Council application. He said that he was born 350 metres from the footpath and could remember the sheets being torn down so that the gate could be installed in order to maintain it. He had been a Member of Faversham BC in 1970 when the decision was taken to add the footpath to the definitive map. He considered that it was essential to ensure that the crossing point between Crab Island and Faversham reach needed to be at the same level. This would be achieved by the installation of the ramp and Faversham Municipal Charities had sufficient funds to develop the proposal. He added that the current footpath was the only access to 35 properties along Waterside Close.

(29) Mr Mike Maloney (a resident of Faversham reach) spoke in favour of the Faversham reach Residents Association proposal. He said that Faversham Reach was sited on what had been a private shipyard built in 1916, and had continued to operate until 1970. He went on to say that the shipyard had never been accessible to the public because of the very nature of its business. He explained that he was a filmmaker and that in 2008 he had produced a film about the shipyard entitled "A Sideways Launch" in conjunction with the community in Faversham. It had taken him two years to research and complete the filming and editing. The documentary evidence he had obtained through filmed interviews, together with the substantial collection of still photographs made available to him were conclusive evidence that the shipyard had been very tightly controlled by the Pollock family, and that nobody had gained entrance to it without their full permission. No right of way existed on this busy and dangerous industrial site, through a period which had included two world wars, and it was inconceivable that the general public would have been allowed access to such a heavily-industrialised and secure area.

(30) Mr Maloney went on to say that the land had continued to be inaccessible to the public after the shipyard closed in 1970 and that it had continued to remain so until now.

(31) Mr Maloney then said that planning permission had been given in the 1980s to build residential properties on the area now known as Faversham Reach. The documentation provided to the developers by Swale Borough Council had contained no reference to any existing footpath on this location. Nor had Footpath ZF5 emerged in over 35 conveyancing processes when properties in Faversham Reach had changed ownership.

(32) Mr Maloney went on to compare the two applications. He said it would be difficult to define a footpath within Faversham Reach as the area had been specifically designed as an access road for residents only. The environment of the proposed path would be less attractive to walkers as it went through a residential development and traffic areas. In contrast, the existing unpaved and natural footpath that followed the Creek and the public open space maintained the desired line towards the Saxon Shore Way and was perfectly in keeping with its country aspect.

(33) Turning to health and safety concerns, Mr Maloney said that all corners of the circular road within Faversham Reach were tight and unsighted and that a proposed footpath would therefore represent an increased hazard for both residents and the public. The proposed footpath was longer and more tortuous than the current existing route and potentially more dangerous. The entrance into Faversham Reach was a busy access road which was used constantly by the residents as well as by delivery and public utility vehicles. The danger presented by the siting of this footpath represented an unnecessary risk to pedestrians, including unsupervised children and wheel chair users who were more used to traffic free areas. He believed that the applicant had not given sufficient thought to the safety issues that were particularly relevant to the disabled. The current Saxon Shore Way path removed a significant aspect of this proposed dangerous route.

(34) Mr Maloney then said that at this time the residents were able to easily monitor movements of both people and traffic as there was only one entrance/exit. The proposed footpath would increase the opportunities for vandalism and theft to properties and affect the security of the boats moored in the adjacent marina.

(35) Mr Maloney said that the number of Anti Social Behaviour offences had been increasing every year in Faversham Reach. Kent Police had provided the Residents Association with figures from 2004 which had now been made available to the Panel. He asked the Panel to note that in the period from January 2011 until August 2012, 44 separate offences had been committed. Many of these offences had involved criminal damage and theft.

(36) Mr Maloney said that the Residents Association had needed to have fences erected at both ends of the quay at Faversham Reach in response to Anti Social Behaviour committed by young people. This fencing had been erected in 2005 at a cost of almost £7,000.

(37) Mr Malooney then gave some recent of Anti Social behaviour. As recently as October 2012, a substantial stretch of hedge adjacent to the properties had been set alight. The ensuing fire had endangered the nearby houses. In 2009, some fifty paving stones had been torn up adjacent to the moorings and thrown into the Creek. Fortunately no vessels had been damaged. That same month had also seen an attempt to release two of the boats from their moorings. The theft of a winch handle and electrical torches from another boat had also very recently been reported.

(38) The floating pontoons on the moorings present a real hazard at high tides to children and others not accustomed and not authorised to use them. Therefore a permanent security fence would need to be erected between the 'deep water' marina and the proposed path together with appropriate safety warnings and lighting. This would minimise any claims made by the Town Council regarding the enhancement of public enjoyment resulting from their application. Agreement would certainly need to be reached with the landowner about public liability insurance.

(39) Mr Maloney added that there would be a compensation claim if the Town Council's application were to be successful. The Residents Association had been led to believe that the value of the properties would fall by as much as 15%. It was estimated that any claim for Faversham Reach would be in the region of £900,000.

(40) Mr Maloney then turned to the original planning and development stages of Faversham Reach. He said that Faversham TC had met on 14 September 1987 (17 years after the 1970 definitive map had mysteriously appeared) to debate (and approve) the proposed development of the West Yard of the shipyard, now known as Faversham Reach. The minutes of that meeting stated “*This is an inauguration scheme if carried out in all detail as presented could be an amenity of value to the area*”. The only rider mentioned by the Town Council had been concern over the flooding risks. No footpath or right of way had been mentioned or debated. He believed that an existing PROW must have been known about and would have been or should have been discussed, as this was a pioneering development for Faversham at the time. Yet neither the Town Council nor Swale Borough Council had raised the issue of Footpath ZF5.

(41) Mr Maloney then referred to recent correspondence from Mr Chris Wade (Principal Case Officer for Public Rights of Way for KCC) stating that Footpath ZF5 was not shown on the 1952 map and that the first time it had appeared had been in draft in 1970. Mr Wade had also confirmed that no documentation could be found at KCC to substantiate the reason for the appearance of this path on a map. He had gone on to say that at that time Swale Borough Council had been responsible for all Highway matters. Mr Wade had also confirmed that KCC had indicated in 2008 that it would be seeking a diversion of Footpath ZF5 away from the Creekside and on to the Saxon Shore Way.

(42) Mr Maloney concluded his remarks by saying that the application by the Town Council, the mystery surrounding missing files and some dubious lines on a map plus the discovery of the Faversham TC minutes of 1987 struck him as the basis for an Agatha Christie novel.

(43) Mr Mike Cosgrove (Chair of the Faversham Creek Consortium) said that the need for a joined-up route footpath route had been discussed at the Consortium’s Annual General Meetings for a number of years. The proposal by Faversham TC would reinstate the creek side line with no detrimental effects for the local residents.

(44) Ms Natalie Earle (Planning Officer from Swale BC) said that the Borough Council supported the proposed new route as part of the overall Faversham Creek Neighbourhood Plan.

(45) Mr Tom Ben-Joseph (Chairman of the Faversham Reach Residents Association) said that he had moved into the area 20 years earlier. He had often walked along the river. He said that it was remarkable that no one had heard of Footpath ZF5 before 2004, particularly as Kent County Council had a duty to protect and maintain public rights of way.

(46) Mr Ben-Joseph went on to say that Faversham TC’s suggestion of a ramp between Crab Island and Faversham Reach was both dangerous and potentially difficult for elderly people to ascend. It would also attract further trouble. He did not consider that the Town Council’s proposed route would give people a beneficial river experience. Its only effects would be to waste public money and spoil the existing walkway along Saxon Shore Way.

(47) The PROW Officer said in response to Mr Ben-Joseph that the slope of the ramp would be 1 in 12. This would comply with DEFRA guidance and with the provisions of the Equalities Act 2010.

(48) Ms Anne Salmon (Chair of the Faversham Society Planning Committee) spoke in favour of the Faversham TC application. She said that the report showed that the only difference in the current route and that proposed by the Town Council was that the latter route avoided running under the houses on the creek frontage of Faversham Reach, which had been built over the official line. Faversham Society supported the Town Council's intention to create a footpath which would enable access to the creekside for the greatest distance possible.

(49) Ms Salmon then said that the Faversham had some minor questions about the proposal. She asked why the ramp had a return slope towards the Upper Brents when there was no need for access to the north side of the former shipyard wall. She said it would also be preferable for the access from Faversham reach into the former shipyard to be closer to the entrance to Waterside Close, reducing the potential conflict with vehicles at the point of exit.

(50) Ms Salmon continued by saying that the footpath proposed by the Faversham Reach Residents Association had already been identified by the consultant, Richard Guise as being of poor quality with regard to its environment and its legibility as a route around the creek. It was not maintained in a good condition and took the walker away from the creek frontage. It was an unofficial line which had only been used because the official line had been obstructed.

(51) Ms Salmon went on to say that the revised line proposed by the Town Council, when added to the footpath along the creek side of Waterside, would complete a footpath along the full length of the Brents bank of the creek from Brent Road to the sea wall. The Faversham Society understood that works to connect the Waterside Close footpath to the sea wall via a ramp were likely to be the subject of a planning application in the near future. A footpath along the full length of the creek on one side would be a tremendous asset to the town and would represent a substantial achievement ahead of the completion of the Faversham Creek Neighbourhood Plan.

(52) The Chairman confirmed that the Waterside Close footpath was not part of the Panel's considerations in respect of the applications that it was being asked to determine.

(53) Mr Mike Palmer spoke on behalf of the Residents Association application. He said that he believed those who supported the Town Council's proposal had a hidden agenda of wanting to link the route to Waterside Close. He also considered that the proposed ramp was completely dangerous. He asked for the proposed construction details.

(54) The PROW Officer said that if the Faversham TC proposals were agreed, the details of the ramp would be considered by Jacobs (the County Council's consultants) for assessment and approval.

(55) Mr Andrew Culham (the local Town Councillor) said that he fully supported the local residents, who had paid for their houses in good faith. He affirmed that there

was a problem of vandalism on the boats and jetties. He asked the Panel to treat the local people's concerns very seriously.

(56) Mr Mike Henderson (Local Swale Borough Councillor) said that he had lived in Faversham for 33 years. He had chaired the Committee in the 1990s that had steered the production of the Swale Borough Local Plan. Consideration had been given at that stage to having a footpath on both sides of the creek.

(57) Mr Henderson asked the Panel to note that there had not been a problem in respect of the existing informal footpath arrangement. The main concern that people had was to be able to reach Point C on the two Appendix maps in order to get to the Marshes. There were in fact a number of areas where there were problems in getting the paths close to the creek. He therefore suggested that as there was no difference between the two proposed routes for the average walker, the decisive factor should be the convenience of the residents (for whom the outcome made a great deal of difference). He said he believed the route proposed by the Town Council would cost a lot of money and achieve very little, and that things should be left as they were.

(58) Mr William Alberry spoke as the applicant for the Faversham residents Association application and as the landowners' representative. He noted that the Residents Association original objection to the Town Council's proposal had now been circulated to all parties but said he was still concerned that the Residents Association proposal was being considered under sections 118 and 26 of the Highways Act 1980 instead of section 119, as the latter section had wider criteria. He said that, although Saxon Shore Way did not enjoy public right of way status, it would be better to divert the public footpath along what had become the alternative route.

(59) The PROW Officer confirmed that although the "alternative route" was not recorded on the Definitive Map, there was no doubt that it enjoyed acquired public rights. She explained that although the Definitive Map was conclusive in respect of the rights that it did show, it was not conclusive in respect of those it did not.

(60) Mr Alberry went on to say that one of the tests set out in section 119 of the Highways Act was whether it was expedient in the interests of the owner of the land that the right of way should be diverted. He said that only the Residents Association proposal would have satisfied that criterion

(61) Mr Alberry then raised the question of the proposed ramp. He referred to section 29 of the Commons Act 1876 and said that its interpretation was any attempt to construct a ramp on the village green would be in breach of the Law.

(62) The Countryside Access Principal Case Officer said that the Law allowed the construction of something on the land that would improve the use and enjoyment of the Village Green. In his view, facilitating access to and from the village green would not breach Victorian statutes.

(63) Mr Alberry then referred to the *Ashbrook v. East Sussex CC* case and said that once the ramp had been constructed there would be legal ramifications if the reinforced concrete wall were to be damaged.

(64) Mr Alberry said that it had been established that any diversion of a public footpath had to be convenient, practical, suitable and appropriate. He noted in this

context that part of the Town Council's proposed diversion would take the path over an area which had been specified as a car parking space on the planning permission for Faversham Reach. This condition did not permit any other development and would need to be amended. This, in turn, would lead to vehicles being parked on an already congested part of the public highway.

(65) The PROW Officer clarified that the fact that there was an alternative route being used by the public was not relevant in terms of applying the tests as laid down in the Highways Act 1980. The only comparison that could be made in terms of the proposed diversion was that between the line on the Definitive Map and that along which it was proposed to divert the footpath.

(66) Mr Gates (Local Member) informed the Panel that he was also a Member of Faversham TC. He said that he believed that the Town Council's proposed diversion should go ahead enabling the establishment of a continuous route. He referred to the history of the Pollard Shipyard by saying that before 1970, an apprentice would open the gate in order to allow people to walk there. This was a facility that had been lost to the people of Faversham, and they deserved to have it restored. He concluded by saying that the residents were not responsible for building the houses over the line of the public path.

(67) In discussion, Mr Pascoe said that as Faversham Reach had been constructed in 1989, no one could have used Footpath ZF5 for 23 years. Common sense therefore suggested that the route set out in Appendix B was appropriate.

(68) Mr M J Angell moved, seconded by Mr S J G Koowaree that the recommendation set out in paragraphs 65 and 66 of the report be agreed.

Lost by 3 votes to 2

(69) Mr R A Pascoe moved, seconded by Mr A D Crowther that an Order be made under Section 118 of the Highways Act 1980 to extinguish part of Public Footpath ZF5 at Faversham; that an Order be made under Section 26 of the Highways Act 1980 to create a Public Footpath at Faversham (as set out in Appendix B to the report) and that the County Council decline to make the Order recommended in paragraph 65 of the report.

Carried unanimously

(70) RESOLVED to:-

- (a) make an Order under Section 118 of the Highways Act 1980 to extinguish part of Public Footpath ZF5 at Faversham and make an Order under Section 26 of the Highways Act 1980 to create a Public Footpath at Faversham (as set out in Appendix B to the report); and
- (b) decline to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath ZF5 at Faversham.

Update from the Definitive Map Team

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee on Tuesday 22nd January 2013.

Recommendation:

I recommend that Members receive this report.

Production of a new Definitive Map and Statement

1. As explained at the meeting on 15th May 2012, the Countryside Access Service has been in the process of producing a new Definitive Map & Statement (DMS).
2. The project has involved the creation of an electronic record and the careful checking of that new data set. All modifications i.e. diversions, extinguishments, additions, upgrades/downgrades which had been made to the 1987 Map have been incorporated within the new map.
3. During the summer months, a 3 month consultation took place giving the opportunity for people to examine a draft of the updated DMS and to raise queries about anything contained within it. Over 100 issues were raised, all of which were reviewed and changes made where legally possible i.e. where an Order had been missed or the alignment of a route had been incorrectly interpreted. If it was not possible to make the change requested, the consultee was informed of the reason why. All responses have been logged in a spreadsheet for future reference.
4. Following the consultation, the final layouts were completed incorporating any additional changes which had come into force prior to 12 December 2012. The new DMS was proposed to have a relevant date of 12 December 2012; however it has come to light since writing my first report that we may have to delay the publication and circulation of the new DMS until all outstanding Orders have been resolved. There are currently a number of Orders with the Planning Inspectorate awaiting determination and a few Orders which have received objections and therefore require submitting to the Planning Inspectorate.
5. The County Council is going to seek further advice on this issue as it could potentially delay the publication by a considerable amount of time whilst the Planning Inspectorate process the Orders. It also has the potential to delay existing case work. I will of course up date you further once we are in receipt of the advice.

Recommendation

6. I RECOMMEND Members receive this report.

Contact Officer:

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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 22nd January 2013.

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 six Regulation Committee Member Panel meetings and a total of thirteen Village Green applications have been considered. Of these, two were referred to Public Inquiry, three were registered as new Village Greens and five applications were rejected or otherwise not progressed. A further three are due to be considered at a meeting on 21st January 2013.
3. Also over the last twelve months, four Public Inquiries have been arranged. Two of these (at Herne Bay and Whitstable) involved very complex cases and the hearings each lasted two weeks (which is considerably longer than average for a Village Green Inquiry). One Public Inquiry (at Lyminge) had to be cancelled at short notice due to the land in question being transferred to the Parish Council and the former landowner no longer wishing to take part in the Inquiry. The remaining Inquiry (at Wickhambreaux) commenced in November and had to be adjourned but is due to resume on 27th February 2013. This year, there will also be Public Inquiries into applications at Canterbury (commencing on 18th March 2013) and Hythe (details to be confirmed).
4. At the end of last year, the Planning Inspectorate issued its decision in respect of the application to register land known as the Long Field at Cranbrook as a new Village Green. Members will recall that this application was referred to the Planning Inspectorate for determination on the basis that the County Council had an interest in the outcome of the application (as landowner) such that there was unlikely to be confidence in the authority's ability impartially to determine it. A Public Inquiry was held in September last year at which an Inspector appointed by the Planning Inspectorate heard evidence from users of the land and objectors to the application (which included KCC's Property Group). The Inspector's decision was that the application did not meet all of the required legal tests and the land was therefore not capable of registration as a Village Green. A copy of the Inspector's decision is available at:
http://www.planningportal.gov.uk/uploads/pins/common_land/decision/com329_decision.pdf
5. There are currently 18 applications awaiting determination by the County Council, of which 16 are currently under investigation. There are a further three Regulation Committee Member Panel meetings due to be held in the next few weeks, at which it is hoped that 10 of the outstanding cases will be resolved or progressed to Inquiry stage.

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. There are two applications to amend the Registers of Common Land and Village Greens currently with the Planning Inspectorate for consideration. One of these (in respect of VG124 at Whitstable) will be the subject of a hearing before an Inspector appointed by the Planning Inspectorate on 5th February 2013, and the other (in respect of CL82 at Sevenoaks) is uncontested and will be dealt with on the basis of evidence already provide to the Inspectorate. A further application (in respect of VG126 at Whitstable) is due to be referred to the Inspectorate shortly.
8. At the last meeting of the Regulation Committee, authority was sought from Members to proceed with a project to publish fresh editions of the Registers of Common Land and Town or Village Greens. Members will recall that the majority of the current maps were prepared in the 1970s and are of poor quality on a now very outdated base map. Resources are now being focussed on this task and it is hoped that fresh editions of all of the Register maps will be available by the end of the year.

Consultation on the registration of new Town or Village Greens

9. Members will recall that in July 2011, a consultation was launched by DEFRA on proposals to reform the system for registering new Town or Village Greens under section 15 of the Commons Act 2006. The reforms were 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.
10. DEFRA's summary of responses to the consultation, along with a statement of the reforms proposed, was published in November 2012 and is available online at: <http://www.defra.gov.uk/consult/files/consult-tvg-sum-resp-20121114.pdf>. In total, DEFRA received 277 responses from a wide range of individuals and organisations (including local authorities, developers and preservation groups). The majority of respondents agreed that reform of the current legislation was desirable in order to streamline the process, to prevent vexatious applications and reduce the impact of applications on development.
11. As a result of the consultation, the Government has introduced several reforms which will be brought into effect through the Growth and Infrastructure Bill (which is currently at the Committee stage in the House of Lords). Not all of the proposed reforms contained in the consultation have been taken forward; the controversial "character test" and the proposal to link Village Greens with the Local Green Space designation, which generated widespread concern, have been dropped.
12. The intention behind the proposed reforms is to prevent vexatious applications from being made by restricting the circumstances in which a Village Green application may be made. Hence, it will no longer be possible to make a Village Green application

where planning permission for the same land is pending or has been granted, or where the land has been identified for potential development in local and neighbourhood plans.

13. Another reform is the introduction of a system whereby landowners can deposit a statement and plan which will bring to an end any use of their land 'as of right'. A similar system is already in place in respect of Public Rights of Way, but there is currently no equivalent for Village Greens. The reform will enable landowners to prevent permanent rights from being acquired over their land without the costly burden of having to erect fencing and notices to restrict or prevent access. It will also enable local people to continue to enjoy the land for recreational purposes whilst preventing a Village Green application from being made in the future.
14. Although the precise details of the reforms are yet to be published, the Growth and Development Bill will undoubtedly have an impact on this area of work. In the long run, there is likely to be a reduction in the number of Village Green applications made, although the County Council can expect a last-minute increase in applications prior to the new legislation being brought in (in order to escape the effect of the new provisions). The reform in respect of landowner statements will create additional work for the Commons Registration Team but it should be possible to integrate this with the existing process in place for Public Rights of Way so as to minimise the burden.
15. The reforms will be considered in more detail in a further report to the Committee once they have been published in their final format with the accompanying DEFRA guidance.

Recommendation

16. I RECOMMEND Members receive this report.

Background documents:

Appendix A – Schedule of Village Green applications

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

**Applications resolved by the Regulation Committee since last report
(5th September 2012)**

Description	Parish	Member(s)	Outcome
Scrapsgate Open Space	Minster-on-Sea	Mr. A. Crowther	ACCEPTED on 11/09/12 (registered as VG263)
Sandgate Escarpment	Sandgate	Mr. T. Prater	REJECTED on 21/11/12
Land at Duncan Down	Whitstable	Mr. M. Harrison Mr. M. Dance	ACCEPTED on 11/09/12 (registered as VG262)
Land at Four Acres	East Malling and Larkfield	Mrs. T. Dean	TBC – Panel meeting held 21/01/13
Land at Willow Road	East Malling and Larkfield	Mrs. T. Dean	TBC – Panel meeting held 21/01/13
Land at Walderslade Woods	Boxley and Aylesford	Mr. P. Carter Mr. P. Homewood	TBC – Panel meeting held 21/01/13

Forthcoming Public Inquiries

Description	Parish	Member(s)	Details
Chaucer Field (at the University of Kent campus)	Canterbury	Mr. G. Gibbens	Commences 18/03/12 at the Franciscan International Study Centre, Canterbury
Seaton Meadow	Wickhambreaux	Mr. M. Northey	Resumes 27/02/13 at Ickham Village Hall
Land known as Fisherman's Beach	Hythe	Mr. C. Capon	Date to be confirmed

Outstanding applications to be resolved

Description	Parish	Member(s)	Status
The Downs	Herne Bay	Mrs. J. Law	Inspector's report received and under consideration
Grasmere Pastures at Whitstable	Whitstable	Mr. M. Harrison Mr. M. Dance	Inspector's report received and under consideration
Land at Woodland Road	Lyminge	Ms. S. Carey	Inspector's report received and under consideration
Rammell Field	Cranbrook	Mr. R. Manning	Under investigation
Land at Cockreed Lane	New Romney	Ms. C. Waters	Under investigation
The Glebe Field	Goudhurst	Mr. A. King	Under investigation
The Cricket Field	Marden	Mrs. P. Stockell	Under investigation
Land at Ursuline Drive	Westgate	Mr. R. Burgess	Under investigation
Land at Bishop's Green	Great Chart	Mr. J. Wedgbury	Under investigation
Land at Mount Pleasant	Hildenborough	Mrs. V. Dagger	Under investigation
Folkestone Racecourse	Stanford	Ms. S. Carey	Under investigation
Riverside Close	Kingsnorth	Mr. M. Angell	Under investigation
Land at Showfields	Tunbridge Wells	Mr. J. Scholes	Under investigation
Kingsmead Recreation Ground	Canterbury	Mr. G. Gibbens	Under investigation
Land at South View Road	Tunbridge Wells	Mr. R. Bullock	Awaiting investigation
Land at Coldblow Woods	Ripple	Mr. S. Manion	Awaiting investigation

By: Head of Democratic Services
To: Regulation Committee – 22 January 2013
Subject: Home to School Transport
Classification: Unrestricted

Summary: To provide Members with an overview on Home to School Transport appeal statistics for the period between 1 January 2012 and 31 December 2012 and a brief comparison with transport appeals statistics over the past three years

1. Introduction

The Chairman has requested that the Committee receive a brief update on Home to School Transport Appeals. He has also requested that the statistics report is simplified and concentrates on total numbers of transport appeals considered and upheld.

2. Transport Appeal Statistics – 2012

(2.1) For the period between 1 January 2012 to 31 December 2012 a total of 97 appeals were considered by Transport Appeal Panels. 26 (24%) were upheld at least in part (e.g. time-limited assistance). The number of appeals heard in 2012 is set out at Table 1 at Appendix A.

(2.2) It is interesting to note that 81 of the total (76%) have been heard between 1 September – 31 December 2012.

(2.3) Appeals Panels sat 17 times during the year with hearings taking place at least once month apart from February and June 2012.

3. Transport Appeal Statistics 2010-2012

(3.1) A table setting out the number of transport appeals heard by Transport Appeals Panels for 2010, 2011 and 2012 is set out at Table 2 at Appendix A.

4. Recommendation

(4.1) Members are asked to note this report.

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TABLE 1
HOME TO SCHOOL TRANSPORT APPEALS -1 JANUARY – 31 December 2012

Month	Upheld	Not Upheld	Total	% Upheld
January	3	1	4	75%
February	0	0	0	
March	1	1	2	50%
April	1	3	4	25%
May	2	1	3	67%
June	0	0	0	
July	1	2	3	33%
August	4	5	9	44%
September	5	26	31	16%
October	1	22	23	4%
November	5	11	16	31%
December	3	8	11	27%
TOTALS	26	80	106	24%

5

TABLE 2
HOME TO SCHOOL TRANSPORT APPEALS - 2010-2012

Year	Upheld	Not Upheld	Total	% Upheld
2010	38	46	84	45%
2011	23	43	66	35%
2012	26	80	106	24%

Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 22nd January 2013.

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 5th September 2012 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1, 2 and 3). They cover unauthorised breaches of planning control and those occurring on permitted sites, primarily waste-related. The emphasis is on live and active cases along with those resolved between Meetings. Those cases resolved or sufficiently progressed to be removed from our immediate workload are highlighted in bold.

Report Format

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

Meeting Enforcement Objectives

Operational shift

5. I have previously advised Members' of an apparent operational shift from traditional unauthorised type cases requiring overt action, to more compliance-based work involving already permitted sites. These tend to be within the waste management field and may usually be addressed through means of retrospective planning applications. Between the two are those activities with limited, district or no planning permissions in place but which display sufficient planning merit to warrant a retrospective approach. There is a non-negotiable requirement however, for pre-existing breaches to be held in tight check, pending the outcome of any application. Lancebox Ltd and Sheerness

Update on Planning Enforcement Issues

Recycling Ltd (Schedule 1, Appendix 1 No. 3 and 9, respectively) are two examples. Experience and expertise from the more severe end of the enforcement spectrum is being made available to help support and service this operational shift. That includes 'surgical' interventions into cases when negotiations have stalled or operators are no longer co-operating, together with specialist advice and mentoring.

Retrospective planning applications

6. Members will notice as part of the above identified trend, a general increase in the number of retrospective planning applications reported within the attached schedules. These mainly arise from the seeking of enforcement solutions through normal planning means. The Government encourages this approach, which acknowledges the needs of business but equally seeks to ensure an equal and compliant 'playing field' for all businesses to operate within. In that way non-compliant operators are prevented from gaining an unfair competitive advantage.

Targeted monitoring

7. It is true that retrospective planning applications are by definition '*after the event*' but targeted and more frequent site monitoring will help to reduce that possibility. Site monitoring guided in particular by a good understanding of new surges and trends within the waste management field, is a useful way to focus the compliance efforts of officers. An example reported to the last Meeting (which apparently seems to have abated of late) is surplus volumes of waste wood appearing on the market, seeking an outlet. New handling capacity may be needed and any proposals would be channelled through the Planning Applications Group. In the meanwhile, compliance issues through the over-use of existing sites (however temporary) might reasonably be anticipated.
8. With that in mind I have instituted a review of all current waste wood handling sites to ensure that planning permissions are being kept to and that stockpiles at alleged contravention sites are being run-down and not increased in height and footprint. A dimension of that exercise involves persistent claims by some major operators that permitted development rights exist (i.e. planning permission is not required) within dock-side locations, to receive, store and despatch such waste wood materials and their derivatives. Ridham Dock is a case in point, which I am currently focussing upon, co-ordinating the efforts of a number of case officers. The area has been initially surveyed from the air and Counsel has been instructed and retained. The object is to resolve the planning status of any questionable planning activities and to more generally intensify our monitoring presence in the area as a way to ensure improved operational standards. This work is on-going but has renewed impetus following the return of the Planning Enforcement Team Leader from extended medical leave.

Wider involvement of the Group

9. The wider Planning Applications Group is gradually becoming more involved in the planning compliance field. The aim is to broaden the experience of our planning officers and in doing so, increase our enforcement capacity. This becomes particularly important when a firm line is needed to ensure that retrospective planning applications or not deliberately protracted in order to allow the base alleged contravention to continue

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unhindered. The initiative in such cases must always be with officers and this Committee and not in any way left in the hands of any errant party.

Co-ordinating and Advisory Role

10. Within the two main workload streams, I am also continuing to offer advice on a number of district enforcement cases. That includes case strategies, project management and guidance on the wider controls and powers available. County Officers have adopted a supportive role and acted in a co-ordinating capacity where appropriate. That may often be 'behind the scenes' but such interventions are no less influential. The 'Cornell's' case at Lypne (see Schedule 1, No. 5), the 'Milton Creek' case in Sittingbourne (see Schedule 1, No. 8) and Four Gun Field case at Upchurch (Schedule 1, No.10) are leading examples of this advisory approach and of a wider contribution to the public cause.

Case focus

11. Since the last Meeting resources have been focussed on 2 sites where formal enforcement action has been taken, 5 cases where investigations are underway and a further 10 cases that have been satisfactorily progressed.

Achievements / Successes [including measurable progress on sites]

Forward momentum on some major cases

12. The ratio of positive outcomes to cases, as opposed to those requiring further attention has been particularly high since the last Meeting. That reflects forward momentum on a number of significant cases within the Swale Borough area, including: Milton Creek, Sittingbourne (Schedule 1, No. 8); Four Gun Field, Upchurch (Schedule 1, No.10); Woodgers Wharf, Upchurch (Schedule 1, No.11) and Raspberry Hill Park Farm (Schedule 1, No.12). Recent progress towards completion in each case is the fruition of extensive previous work, often over a number of years.

New Cases, especially those requiring action / Member support

13. No new substantiated cases have arisen since the last Meeting.

Significant on-going cases

14. I would refer Members to the 'Achievements' section under paragraph 12 above, which highlights forward movement on a number of longstanding and complex cases within the Swale Borough area.
15. The advantage of this success is in its release of more specialist enforcement time for wider initiatives such as supporting the operational shift to increased enforcement awareness and capacity within the Group (see paragraphs 5 and 9 above) and the 'Ridham' review exercise (see paragraph 8).

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Other cases / issues of interest and requests from Members

General issues

16. I would refer Members to the extended section on 'Meeting Enforcement Objectives' between paragraphs 5 to 11 of this report, concerning workload shifts, the wider involvement of the Planning Applications Group within general planning compliance and a growing advisory and co-ordinating role in complex multi-agency cases.
17. On a separate issue, liaison with the Environment Agency has continued to improve and now dovetails better with my own planning enforcement efforts. I have to inform Members however of a disappointing interlude concerning Ripleys Scrapyard at Ellingham Way, Ashford. The EA failed to consult either the County Council or Borough Council on proposed operational changes to the Environmental Permit. These centred on a proposed three-fold increase in throughput, which the EA sanctioned in principle. Any such change would of course require prior planning permission and the operator has been advised of that in writing. However, that does not detract from the understandable local disquiet and the avoidable need for an enhanced monitoring presence to maintain public confidence in the regulation of the site.
18. Both I and officers from Ashford Borough Council have sent formal representations to the EA and received an apology and assurances that we would both be consulted in similar incidences in the future.
19. The episode is unfortunate and goes against the trend. I am willing with Members agreement to regard it as an isolated incident. Indeed, to help restore faith in our working relationship, EA staff helpfully provided front-line support to help cover for the Planning Enforcement Team Leader's recent extended medical absence.

Growth and Infrastructure Bill – Registration of Village Greens

20. Members may recall a Government consultation by Defra in late 2011 which sought views on proposed changes to the registration of new Town or Village Greens. In its response the County Council recognised that there was merit in reviewing some aspects of the registration process to bring it into line with modern demands, but was not convinced that the key driver for the changes and therefore the solution sought was well founded. In particular, it did not share the Government's assumption that applications to register Town and Village Greens are driven by the desire of the local community to delay and ultimately prevent the development of open land. Whilst this may be the experience elsewhere, that has not been strongly reflected in Kent. Defra has yet to formally respond to the consultation, although two of the questions that it sought views on are reflected in the emerging Growth and Infrastructure Bill.
21. In 2011 Defra asked whether there was support for a proposal which would rule out making a Village Greens registration application where a site was designated for development in a proposed or adopted local or neighbourhood plan consultation. It also asked for views whether there was support for a proposal where a Village Green application could not be made after an application for planning permission had been submitted in respect of the site, or where there was statutory pre-application

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consultation, until planning permission had been refused, implemented or expired.

22. In the response to Government the County Council was not supportive of these two proposals arguing that the proposal failed to address that the considerations for planning and Village Green applications were fundamentally different. Planning applications are determined on their planning merits which are subjective in nature and a balancing of factors, whilst Village Green applications are determined strictly on a factual nature as to whether they met prescribed tests – 20 years, as of right, used by local residents and for lawful sports and pastimes. No evidence was given as to how this conflict was to be addressed in the consultation, nor which legislation would take precedent. This Council was concerned that rather than speed up development proposals (which appears to be the Government's objective) it would have the opposite effect, whilst the planning application and plan making processes grappled with submissions from those wanting to pursue a Village Green proposal at the planning application stage.
23. The Growth and Infrastructure Bill was published in October 2012. Sections 12 – 14 and accompanying Schedule 4A relate to the registration of Village Greens. Section 12 provides for new provisions for owner statements in the registration process and Section 14 provides for minor modification of power to provide for fees. Section 13 is of more substance and proposes restrictions on the right to register land as a Town or Village Green. Where certain defined *trigger events* have taken place then land cannot be registered until a corresponding *terminating event* has taken place. These events are defined in Schedule 4 of the Draft Bill and insert a new Schedule 1A into the Commons Act 2006. The trigger events broadly cover the site being the subject of an application for planning permission, the identification for potential development in an emerging or adopted development plan including the new neighbourhood plans and a proposed application for an order granting development consent under s114 of the 2008 Act. The schedule also defines the terminating acts, essentially the planning application is withdrawn, or refused, the exhaustion of legal challenge where decision is refused and the expiration of the permission without implementation. In terms of plan making, the termination events can be summarised as the withdrawal, revocation of the Plan or it ceases to have effect or where a policy in the plan relates to the development is superseded by another policy.
24. This suggested approach is disappointing since it fails to accept the concerns that the County Council were making to Defra. Only time will tell whether development will be inhibited by these proposed changes and whether ill prepared applications to register Village and Town Greens will be promoted at planning application stage leading to potential delays in the determination of planning applications, poor uses of resources and a stifling of effective pre planning application discussions between developers and communities. The latter is a key principle within the Government's Localism agenda.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

25. 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 31 chargeable monitoring visits to mineral and waste sites and 5

Update on Planning Enforcement Issues

non-chargeable visits to sites not falling within the chargeable monitoring regime. This shows a steady increase in numbers of visits over time and signals an expectation of further increases to the agreed visit frequency at selected sites over the next financial year. I would also refer Members to paragraphs 7 and 8 of this report, on targeted Group monitoring with a multi-site purpose; on this occasion in the field of waste wood handling.

Resolved or mainly resolved cases requiring monitoring

26. Alongside the chargeable monitoring regime there is a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to recur. That accounts for a significant and long-established pattern of high frequency site monitoring.
27. Cases are periodically removed to make way for others when the situation on site has been stabilised; restoration (or acceptable restoration) has been achieved, a district or Environment Agency (EA) remit confirmed (or with action being a realistic possibility by them). Another occasion is where a planning application would address the various issues and there is the realistic prospect of one being submitted. Cases then go onto a 'reserve' data base, with an in-built monitoring commitment; ready to be returned to the Committee's agenda should further enforcement issues emerge or a positive planning solution becomes available. Examples this time are Tutsham Farm, West Farleigh (see Schedule 1, No. 4) and Four Gun Field, Upchurch (Schedule 1, No.10).
28. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made. The frequency is usually high but may vary according to the site under surveillance.

Conclusion

29. This report reveals some positive trends. A series of high-profile cases within the Swale Borough area have been well progressed. Indeed, there is an operational shift occurring from costly set-piece enforcement actions of this type, to more application-based approaches, underpinned by the release of available enforcement expertise. This trend reflects in part the current economic climate but also efforts towards a tighter enforcement regime. Drawing on the lessons of major cases over recent years, both the Environment Agency and relevant district councils have been engaging with this Authority in a more meaningful way, to help better protect local residential amenity and the environment. Chargeable monitoring has also been proportionately increased, which further assists in the compliance field.

Recommendation

30. I RECOMMEND that MEMBERS:
 - (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 28 above and those contained within Schedules / Appendices 1, 2 and 3.

Update on Planning Enforcement Issues

Case Officer: Robin Gregory

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Background Documents: see heading

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Active Enforcement Cases

Schedule 1: Contraventions on (part) unauthorised sites

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p style="text-align: center;">Ashford</p> <p>DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)</p>	<p>Previous multiple breaching of landfill permissions, Enforcement Notices and High Court Injunctions.</p>	<p>To secure restoration of the site in the public interest.</p>	<p>The site has now been restored and is being monitored and landscaped.</p>	<p>A site visit by Members to view the overall progress reached has been re-arranged for 26th March 2013.</p>
2	<p style="text-align: center;">Canterbury</p> <p>DC3/CA/03/COMP/OO53 Larkey Wood Farm, Chartham (Member: John Simmonds)</p>	<p>An Environment Agency (EA) visit to this site has uncovered alleged unauthorised waste –related activities taking place, including the depositing and storage of waste materials.</p>	<p>This site is subject to a confirmed Enforcement Notice, whose terms prohibit the importation, stockpiling and storage of waste materials and subsequent processing through screening / crushing. The Notice is underwritten by County Court Injunctions and a County Court Control Order.</p>	<p>Compliance was reached with the Enforcement Notice in late 2009, following a staged site-recovery plan.</p> <p>Regrettably, this has started to slip again, with stockpiles of waste wood, soils and hardcore appearing on site.</p>	<p>The aim is to return the site to the way it was left in 2009. The preferred means is by strict enforcement monitoring. However, the reticence of the owner / occupier means that we shall have to contemplate using available powers. The case is subject to an Exempt Report as Item 11.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	<p>Dartford</p> <p>KCC/DA/0123/12 LanceBox Ltd Plot 14 Manor Way Business Park, Swanscombe</p> <p>(Member: Richard Lees)</p>	<p>Alleged receipt, storage and processing of construction / demolition waste, including wood waste.</p>	<p>A '4-point' plan has been devised, in return for KCC reserving enforcement action. The terms include:</p> <ul style="list-style-type: none"> a) Withdrawal of a Lawful Use Application (LDC) b) Submission of delayed planning application; c) Continued trading only under tight KCC / EA interim controls. d) Reduction of stockpiles / 'stand-off' distance from adjoining chalk cliff face. 	<p>Concerning the '4-point - plan': the LDC has been withdrawn; the planning application has been progressed through a series of consultant reports, which are now being drawn together but submission is still awaited; trading has continued under interim controls and the stockpile of wood has been noticeably reduced, being progressively pulled back from the face of the adjacent chalk cliff .</p> <p>I am currently monitoring the site to evidential standard on a monthly basis, combining as necessary with the EA.</p>	<p>I remain satisfied that the owner / occupiers are making genuine efforts to reduce and permanently remove the waste wood stockpiles but I have concerns over the finalisation of the outstanding draft planning application. I shall continue to pressure on this point by requiring a detailed explanation for the delay and a more definite timetable for submission.</p> <p>In order to ensure continued progress towards addressing this alleged significant breach, I would seek Members continued support for the taking of enforcement action on a contingency basis. That would include the serving of an Enforcement Notice; underwritten if necessary by a County / High Court Injunction.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
4	<p>Maidstone</p> <p>DC3/MA/04/COMP/0060 Tutsham Farm, West Farleigh</p> <p>(Member: Mrs Paulina Stockell)</p>	<p>Unauthorised depositing and burying of builders waste in agricultural land on the bank of the River Medway.</p>	<p>Cessation of tipping and burying of waste.</p>	<p>Teston Parish Council has reported apparent renewed waste material burying on site. However, there is no apparent new tipping from outside sources.</p> <p>The EA were immediately alerted to this alleged breach. They have visited the site and will take the enforcement lead with support from KCC as necessary.</p>	<p>This site has been the subject of previous enforcement action. It was agreed that the EA would take the lead enjoying powers more tailored to the problem but supported by the KCC. The resulting court conviction in 2010, led to a fine in excess of £71,000.</p> <p>An EA Waste Removal Notice was then served which is believed to have triggered the removal of the existing builders waste to a new site within the landholdings. The EA are currently considering their enforcement options on this latest activity.</p> <p>I shall keep Members informed as the case progresses.</p>

	Site & Case Reference	Alleged Breach	Objectives / Actions	Progress	Notes / Remarks
5	<p style="text-align: center;">Shepway</p> <p>DC3/SH/10/COMP/A02 Keith Cornell Waste Paper Ltd, Lympne Industrial Park, Lympne</p> <p>(Member: Ms Susan Carey)</p>	Alleged unauthorised waste-related recycling use on industrial land, resulting in noise complaints and related disturbance to local residents.	<p>To achieve a reduction in the current amenity impacts through voluntary restraint, pending the outcome of an application for retention of the use.</p> <p>A meeting of regulators (including the local EHO) agreed that further enclosure of site activities represents the most appropriate solution to the main noise impacts.</p>	<p>The owner / occupier was willing to amend a draft application to allow for further site enclosure. Noise consultants were advising in this case of form following function.</p> <p>However, the business of the applicant has recently gone in to receivership. This has resulted in the removal of the breach and any previous amenity impacts.</p> <p>The site has now been sublet to a local business created by former employees who are operating a small scale paper-shredding operation.</p>	<p>The planning status of this new fledging use will need to be agreed with Shepway District Council, along with site jurisdiction.</p> <p>All operations are taking place under cover and there are no evident external amenity impacts at present. Previous complaints by local residents, particularly concerning noise have now ceased.</p> <p>It appears that a retrospective planning application is the best approach in this instance, once the planning lead is confirmed between the County and District Council Authorities.</p> <p>I shall report on the outcome 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>
6	KCC/SH/0333/2012 [DC3/SH/11/COMP] Johnsons Recycling Ltd, Unit 1 Park Farm Close, Folkestone (Member: Richard Pascoe)	Shepway DC reported this alleged unauthorised waste scrap metal recycling use within an industrial estate, near other independent waste uses. The operator had re-located from a residential area in Folkestone.	To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.	A retrospective application was received on 29 th October 2012 and is being processed. It will be reported to PAC or determined under delegated authority as appropriate.	I intend to remove from these schedules for now, returning when the outcome of the planning application is known.
7	KCC/SH/0323/2012 [DC3/SH/12] Cube Metal Recycling Unit A Highfield Industrial Estate Folkestone (Member: Roland Tolputt)	This site was brought to the attention of KCC by Kent Police and the Environment Agency (EA). Its operation consists of the importation, sorting and processing of scrap metals, for later despatch.	To achieve planning compliance and supportive control through an EA Permit. I am adopting the same consistent approach with numbers 5 (Cornell's) and 6 (Johnsons) above.	A retrospective planning application has now been submitted and validated, with recent re-consultation on a further noise assessment report.	In principle the use appears capable of officer level support, subject to satisfactory amenity considerations. However, I would seek Member support for the serving of an Enforcement Notice , should full co-operation not continue. I shall continue to monitor the situation in the meanwhile.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
8	<p>Swale</p> <p>DC3/SW/11/COMP/ Milton Creek Sittingbourne.</p> <p>(Member: Mike Whiting & Alan Willicombe)</p>	<p>Over stacking and stock-piling of site materials causing collapse to the banks of the creek, resulting in blocked water flow within the creek and obstruction to navigation. This partly involves an alleged trespass onto Medway Ports Authority land.</p>	<p>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?</p> <p>A multi-agency approach has been adopted involving KCC, Swale BC (SBC), the Environment Agency (EA) and Medway Ports Authority (MPA).</p>	<p>I have negotiated submission of a planning application, for a return of to the scope of the original permission and a remedial package. That has been made to Swale BC and includes a scaling down of site activities and repair to the land and navigation channel. KCC has been consulted, lending support and technical guidance (including suggested conditions and legal controls) to the scheme.</p>	<p>I am confident that the negotiated scheme if granted (with suggested controls), would address the alleged contraventions on site and reverse the severe damage caused to land and water interests. The owner / occupiers (in the ultimate) would otherwise be exposed to concerted action from SBC, KCC, the EA and MPA.</p> <p>I now intend to remove from these schedules, returning when the outcome of the planning application is known.</p>
9	<p>KCC/SW/0136/12 Sheerness Recycling Ltd Unit 34 Klondyke Ind Est Queenborough</p> <p>(Member: Ken Pugh)</p>	<p>Alleged importation of construction and demolition spoil, with mechanical screening.</p>	<p>To exact compliance and planning control.</p> <p>On the evidence I have seen, I remain unconvinced on any lawful use arguments.</p>	<p>Agreement has been reached with the operator for withdrawal of the Lawful Use application, in favour of a retrospective planning application.</p>	<p>The required planning application is still awaited. I shall chase for submission but as a contingency, I would seek Member's continued support for the service of an Enforcement Notice should it be necessary.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
10	DC3/SW/04/COMP/0059 Four Gun Field, Upchurch (Member: Keith Ferrin)	Alleged waste activities on a former brickfield site with an associated lawful use.	To ensure that no waste-related use is carried out on site, particularly given its sensitivity close to housing.	<p>Following the exhaustion of planning and High Court Appeals, the terms of the County Council's Enforcement Notice were eventually complied with.</p> <p>A planning application has since been submitted to Swale B.C. for the development of 36 houses and a residential care home with 80 beds, accompanied by public open space for wildlife.</p> <p>In the interim, applications to retain site infrastructure and the current status quo have been granted permission by the Borough Council.</p>	<p>Concerning the main and outstanding application, I have asked the Borough Council to ensure that the problematic Lawful Use Certificates are surrendered as a pre-requisite to any new permission. In other words, to achieve a complete development overlay, giving final surety of a normal quality of life to neighbouring residents.</p> <p>I propose to remove from these schedules for the time-being, returning when the outcome of the main planning application is known.</p>

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

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

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>Swale</p> <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 operational breaches have been previously reported to Members, such as external storage / processing of wood waste; dust control problems; a concrete pad outside of the permission area and alterations to the approved site layout.</p>	<p>To seek redress thorough means of retrospective planning applications.</p>	<p>Planning permission for the concrete pad has now been granted and the remaining operational issues, the subject of a further application are due for determination shortly.</p>	<p>I am satisfied that contingency support from Members for the Service of Breach of Condition Notices offers sufficient sanction and control in this instance. I am monitoring the site more closely in step with a more stringent approach to the Company and its operation.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
2	<p>Tunbridge Wells</p> <p>Officers are DC3/TW/12 CLC Construction Ltd Westdene Five Oaks Green</p> <p>(Member: Alex King MBE)</p>	<p>Material change of use from a former scrapyard to the servicing of utility contracts, with the stockpiling of spoil on site and the exchange of material between jobs, with the remainder being sent for processing and alternative re-use.</p> <p>The site is within the countryside and the Metropolitan Green Belt. It is also close to housing.</p>	<p>To control the level of use on the site pending the outcome of the current retrospective planning application.</p> <p>The stockpile having grown in height is restricted in the interim to the height of the lorry cab of the vehicles bringing the material to the site. That is clear to all parties and very visibly enforceable.</p>	<p>A retrospective planning application is being processed with outstanding issues relating to site layout, noise/dust (from screening and crushing), floodlighting, highways and landscaping.</p> <p>On reflection, the applicants have been advised to withdraw the crushing and screening elements and seek a temporary permission for the storage of material subject to the submission of updated highways information, lighting details, landscaping and an improved site layout - with the intention that this would resolve the immediate planning breaches, whilst also allowing progress on the EA Environmental Permit, with its operational controls.</p>	<p>Enforcement powers with Members' endorsement are currently in reserve.</p> <p>The stockpile height was exceeded on one occasion but was quickly redressed.</p> <p>Should co-operation be lacking on any other occasion during this planning application phase, I would seek Members' support for the servicing of an Enforcement Notice.</p> <p>I shall keep the Committee informed on progress at this sensitive location.</p>

Schedule 3: Alleged breaches on Permitted County Council Developments

Appendix 3

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p style="text-align: center;">Thanet</p> <p>KCC/PRE/TH/0288/2012</p> <p>Cliftonville Primary School, Northumberland Avenue, Cliftonville, Margate, Kent, CT9 3LY</p> <p>(Members: Mr C Wells and Mr M Jarvis)</p>	<p>A complaint was received from nearby residents about a ‘number of portacabin like out buildings’ erected on the site and the ‘outlook onto the school not being an aesthetically pleasing view but a large number of large shed like rooftops’.</p>	<p>To investigate and seek to regularise through a retrospective planning application.</p> <p>An investigation was carried out which found that some seven sheds, cabins and/or garages had been erected on the site over the last few years.</p>	<p>Some of the sheds are used for Special Education Needs and others for storage purposes. Four of these are covered by permitted development rights, one was granted planning permission in 2007, and the remaining two neither benefit from permitted development rights nor planning permission.</p>	<p>The application was considered by the Planning Applications Committee at the December meeting when Members resolved to grant planning permission.</p> <p>I shall therefore now remove from these schedules.</p>
2	<p>KCC/TH/0195/2012</p> <p>Ellington and Hereson School, Newlands Lane, Ramsgate, Kent, CT12 6RH</p> <p>(Member: Elizabeth Green & John Kirby)</p>	<p>Erection of 2.4m metal palisade replacement fencing along the school playing field boundary.</p>	<p>To regularise through a retrospective planning application</p>	<p>Planning permission has now been granted</p>	<p>I shall now remove from these schedules.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	<p>Tunbridge Wells</p> <p>The Skinners Kent Academy, Blackhurst Lane, Tunbridge Wells, Kent. TN2 4PY.</p> <p>(Member: Mr J.Tansley)</p>	<p>Alternative flood lighting specification relating to previously permitted Multi-Use Games Area on Site 1 of the Academy.</p>	<p>To regularise through a retrospective planning application.</p>	<p>Retrospective planning permission was granted at the 24th July Planning Application Committee (Item D4 for reference).</p>	<p>Conditions attached to the permission hold the use of the lighting to these alternative specifications.</p> <p>I shall therefore now remove from these schedules.</p>

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

Agenda Item 11

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