

REGULATION COMMITTEE

Tuesday, 28th January, 2014

10.00 am

**Council Chamber, Sessions House, County Hall,
Maidstone**





AGENDA

REGULATION COMMITTEE

Tuesday, 28th January, 2014, at 10.00 am Ask for: **Andrew Tait**
Council Chamber, Sessions House, County Telephone: **01622 694342**
Hall, Maidstone

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

Membership (17)

- Conservative (9): Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman),
Mr A H T Bowles, Mrs V J Dagger, Mr J A Davies, Mr T Gates,
Mr P J Homewood, Mr J M Ozog and Mr J N Wedgbury
- UKIP (3) Mr M Baldock, Mr H Birkby and Mr A D Crowther
- Labour (4) Mr C W Caller, Mr G Cowan, Mr T A Maddison and
Mrs E D Rowbotham
- Independents (1): Mr P M Harman

UNRESTRICTED ITEMS

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

1. Membership
2. Substitutes
3. Declarations of Interests by Members in items on the Agenda for this meeting.
4. Minutes (Pages 5 - 48)
 - (a) Committee: 3 September 2013
 - (b) Member Panel: 24 September 2013
15 October 2013
26 November 2013 (Kingsmead)
26 November 2013 (Ripple)
3 December 2013
17 December 2013
5. Transport Appeal statistics (Pages 49 - 50)

6. Update from the Commons Registration Team (Pages 51 - 54)
7. Update on Planning Enforcement Issues (Pages 55 - 84)
8. Other Items which the Chairman decides are Urgent
9. Motion to exclude the 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)

10. Update on Planning Enforcement issues at Larkey Wood, Chartham (Pages 85 - 92)
11. Update on Planning Enforcement issues at Thirwell Farm, Hernhill (Pages 93 - 96)
12. Update on Planning Enforcement issues at Barnsfield Park, Ash (Pages 97 - 100)
13. Update on Planning Enforcement Issues at Greenbridge Park, Vauxhall Road, Canterbury (Pages 101 - 104)
14. Update on Planning Enforcement issues at Astley Avenue, Dover (Pages 105 - 108)

Peter Sass
Head of Democratic Services
(01622) 694002

Monday, 20 January 2014

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

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KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 3 September 2013.

PRESENT: Mr M J Harrison (Chairman) Mr S C Manion (Vice-Chairman)
Mr M Baldock, Mr H Birkby, Mr C W Caller, Mr G Cowan, Mrs V Dagger,
Mr J A Davies, Mrs M Elenor, Mr T Gates, Mr P M Harman, Mr P J Homewood,
Mr T A Maddison, Mr J M Ozog and Mr J N Wedgbury

IN ATTENDANCE: Ms C Fenton (Learning Disability and Mental Health Officer),
Ms C Brodie (Practice Support Manager), Ms D Fitch (Democratic Services Manager
(Council)), Mrs L Wilkins (Definitive Map Team Leader), Ms 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),
Mr H Burchill (Senior Planning Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

19. Membership

(Item 1)

The Committee noted the appointment of Mr P M Harman.

20. Minutes - 18 June 2013

(Item 4)

RESOLVED that the Minutes of the meeting held on 18 June 2013 are correctly recorded and that they be signed by the Chairman.

21. Guardianship Orders - Presentation by Cheryl Fenton, Head of Mental Health Social Work

(Item 5)

(1) The Committee received a presentation from Cheryl Fenton, Head of Mental Health Social Work. The topics covered were the Mental Health Act; the County Council's and its Members' responsibilities relating to Guardianship (including the delegation of responsibilities); the Code of Practice principles relating to Guardianship; costs and the recent rationalisation of the County's Guardianship Register. The presentation concluded with a case study.

(2) It was agreed that a copy of the presentation slides would be sent to all Members of the Committee.

(3) RESOLVED that Ms Cheryl Fenton be thanked for her comprehensive presentation and that its contents be fully noted.

22. Home to School Transport Appeals update

(Item 6)

(1) The Democratic Services Manager gave an overview of Home to School Transport appeal statistics for the period between 1 January 2013 and 31 July 2013 together with a brief comparison with the statistics for 2012.

(2) The Committee noted that a training session on Transport Appeals would be held on 10 October 2013.

(3) RESOLVED that the report be noted.

23. Update from the Definitive Map Team

(Item 7)

(1) The Committee discussed a report by the Head of Regulatory Services on the background to the Definitive Map and Statement of Public Rights of Way, as well as progress with Definitive Map Team applications.

(2) RESOLVED that the contents of the report be noted.

24. Gating Order Review - The Kent County Council (Un-named footpath to the rear of Henley Fields, Tenterden) (Gating) Order 2008

(Item 8)

(1) The Committee considered a report which recommended the continuation of the Gating Order which had been in operation at Henley Fields in Tenterden since 2009.

(2) During discussion of this item, the Committee noted that the Gating Order at Public Footpath AU79, St Mary's Church Yard Passage at Ashford, which had been confirmed by the Member Panel on 24 September 2012, had not yet been implemented. The Chairman agreed to write to Ashford BC to ascertain the reasons for the lack of progress.

(3) RESOLVED that the Gating Order at Henley Fields, Tenterden continue in operation and that this Order be the subject of a review every two years.

25. Update from the Commons Registration Team

(Item 9)

(1) The Committee considered a report by the Head of Regulatory Services on progress with Village Green applications and recent legislative changes.

(2) The Public Rights of Way and Commons Registration Officer reported that Member Panel meetings were due to take place on 24 September and 15 October 2013.

(3) RESOLVED that the contents of the report be noted.

26. Update on Planning Enforcement Issues

(Item 10)

- (1) The Committee discussed a report by the Head of Planning Applications Group which gave an update on planning enforcement and monitoring work carried out by the Planning Applications Group since the June meeting of the Committee.
- (2) During discussion of the active enforcement cases, the Committee agreed to support the service of an Enforcement Notice at Cube Metal Recycling, Folkestone if it should become necessary.
- (3) RESOLVED that endorsement be given to the actions taken or contemplated on the respective cases set out in paragraphs 5 to 22 of the report and those contained within Schedules 1, 2 and 3 appended to the report.

EXEMPT ITEMS

(Open Access to Minutes)

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

27. Update on Planning Enforcement issues at Larkey Wood, Chartham

(Item 13)

- (1) The Head of Planning Applications Group reported on planning enforcement issues at Larkey Wood farm, Chartham. This included action taken by a multi-agency Task Force, consisting of KCC planning Enforcement, Canterbury CC (Planning and Enforcement sections), the Environment Agency and Kent Police in respect of apparent site breaches. The report also set out proposed next steps.
- (2) RESOLVED that the enforcement strategy outlined in paragraphs 5 to 20 of the report be endorsed.

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REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Palmer Room, Langton Green Village Hall, Winstone Scott Avenue, Langton Green, Tunbridge Wells TN3 0JJ on Tuesday, 24 September 2013.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr M Baldock, Mrs V J Dagger and Mr T A Maddison

IN ATTENDANCE: Ms 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 Glebe Field in the parish of Goudhurst as a new Town or Village Green *(Item 4)*

(1) The Panel Members visited the application site before the meeting. This visit was attended by Mr E Bates (applicant) a representative from Goudhurst PC and four members of the public. The applicant drew the Panel's attention to the pathway which had been constructed when the new primary school was opened and used by local people to avoid the main road. He pointed out the parking on the land which occurred when church events were taking place and the chain on the vehicular entry point which prevented local residents using the land for parking. A local resident also pointed out the informal entry point adjacent to the Church Rooms, which was used by a number of people to gain access to the site.

(2) The Chairman informed the Panel that the Local Member, Mr A J King had sent his apologies owing to a clash with other Council business. He had asked to be kept informed of the progress of the application.

(3) The Commons Registration Officer began her presentation by saying that the application had been made by Mr E Bates under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 112 user evidence forms and other evidence (including a statement detailing the history and use of the site, a copy of the leases between Kent County Council and the Canterbury Diocesan Board of Finance, notes of a meeting between the Parish Council and the landowner regarding the future of the site, photographic evidence of organised activity taking place on the land in question and a programme from the 1997 fete).

(4) The Commons Registration Officer went on to set out the case put forward by the applicant. This was that the site was had been used for generations on a daily basis by a significant number of local people. Although Goudhurst and Kilndown Primary School had a lease which allowed its pupils to play sport on the field, local residents had continued to use the site for their own recreation whilst ensuring that this use did not interfere with school use.

(5) The Commons Registration Officer then described the responses from consultees. Tunbridge Wells BC (Planning and Development) had stated that the field had been used for recreational purposes, although it could not confirm whether this use had been by a significant number of inhabitants of the locality or of a neighbourhood within a locality. A local resident, Mr P Glyde had written in support of the application, saying that the land was in regular use for dog walking, socialising and football. He had also drawn attention to the well-attended fetes and shows which took place during the summer months.

(6) The Commons Registration Officer continued by saying that the site was owned by the Canterbury Diocesan Board of Finance who had leased it to Kent County Council as a school playing field between the years 1966 and 2010. The Landowner had permitted the County Council to construct a footpath in 1998 and to install two gates at either end of the pathway.

(7) An objection had been received from Graham Boulden and Co, acting on behalf of the landowner. The first ground for objection had been that the application was invalid as the application plan included land not owned by the landowner. The Commons Registration Officer said that this was not a factor that could, in itself, invalidate an application. Equally, the fact that the applicant had only moved into Goudhurst in 1996 (after the qualifying period had begun) did not prevent him from claiming Village Green status for the land in question.

(8) Graham Boulden and Co's other grounds for objection were that permission had been granted for use of the field, which signified that use had been "by right" rather than as of right; that some of the recreational use had been ancillary to the main purpose of walking along the footpath; and that part of the land was used for parking in connection with the church. They had also drawn attention to the *Newhaven Port and Properties Ltd v. East Sussex County Council* case where it had been ruled that registration as a Village Green could not take place where it would be inconsistent with the statutory purpose for which the land was held. The Commons Registration Officer advised that this decision had been overturned in the subsequent Court of Appeal judgement in the same case.

(9) The Commons Registration Officer moved on to consideration of the individual tests for registration to take place. The first of these was whether use of the land had been "as of right". She said that use had clearly not been by force or stealth. The question of whether or not the land had been used with permission was disputed by the two parties involved. The landowner had provided a copy of a flyer advertising the 1994 village fete. This had included the statements "*by kind permission of the head teacher*" and "*entry by programme.*" The landowner contended that these statements demonstrated that the head teacher was entrusted by the landowner with control over the application site and that the public would consequently understand that their attendance at the fete was by virtue of his consent on behalf of the landowner.

(10) The applicant's contention was that the lease between the landowner and the County Council specifically restricted use to primary school children. Therefore, the head teacher would not have been in a position to grant permission on behalf of the landowner. His permission would only have been sought to ensure that the fete would not conflict with any school activities. The applicant had also stressed that the

landowner had not been aware that formal activities were taking place on the application site.

(11) The Commons Registration Officer moved on to consider the views of both parties on the implications of the *R Mann v Somerset County Council* case where the Court had found that occasional exclusion from part of the land had been sufficient to communicate to users that their use of the whole land at other times was with the landowner's implied permission.

(12) The landowner contended that entry to the fete was generally by programme, which effectively amounted to a fee being charged. This contention was supported by the local vicar, who had stated that the programmes had been sold in local shops and that the three entrances to the fetes were manned so that those who did not have a programme would be invited to purchase one in order to gain access to the field. In the landowner's view, the circumstances were similar in all pertinent aspects to those in the *Mann* case, preventing the applicant from being able to prove that use had been "as of right" for the period on question.

(13) The Commons Registration Officer said that the applicant's contention was that this case was different to the *Mann* case in that access to the site was not secured and that even though the fetes regularly took up a lot of space, there was still plenty of opportunity for anyone else to use the rest of the land for other recreational activities whilst they were taking place. The applicant also disputed that the sale of programmes was a means of controlling admission. They were, in reality, a means of raising funds towards the cost of the fete.

(14) The Commons Registration Officer concluded this aspect of the application by saying that there was a conflict of fact as to the position when the site was used for fetes and other organised events, making it impossible at this stage to conclude whether use of the site had been "as of right".

(15) The Commons Registration Officer then briefly turned to the other tests. She said that it was clear from the evidence that use of the land had been for lawful sports and pastimes by a significant number of inhabitants of the parish of Goudhurst up to the date of application in 2011. This use had taken place throughout the required period of 1991 to 2011 and, in fact, for a lengthy period before that date.

(16) The Commons Registration Officer summed up by saying that as there was a conflict of fact in relation to the annual fete, the best mechanism for determining whether the "as of right" test had been met was to hold a non-statutory public inquiry. She therefore recommended accordingly.

(17) Mr E Bates (applicant) said that the report had concluded that four of the five requirements for land to be registered as a Village Green had been met but that there was a conflict of fact as to what the position was on days when the application site had been used for fetes and other organised events. The report had therefore been unable to reach a conclusion on whether use of the land in question had been "as of right." The report had accepted that "as of right" use had taken place but was not sure whether this had been the case for the annual village fete. He therefore proposed to deal with this single question.

(18) Mr Bates said that the fetes were organised by a committee made up of representatives from the local Scout group, the Parish Hall committee, the local school Parent Teachers Association (PTA) and the Parochial Church Council (PCC). The chairmanship was rotated between the organisations on a rota basis each year and profits divided between the four.

(19) Mr Bates said he wished to stress that all four organisations were made up of worthy volunteers from the local community and were distinct from, for example, staff members of the local school or church, from which they enjoyed independence and a certain distance.

(20) Mr Bates then referred to the case of *R (Mann) v Somerset* saying that the difference was that in *Mann* the land owner had exercised his right to restrict access, whereas the annual fete on the Glebe Field Glebe was an event which the landowner had confirmed had taken place without his knowledge. A letter dated 1st February 2011, from the Diocese of Canterbury had confirmed (as set out in Appendix 4 of the application) “*that the Diocese was unaware that use was being made of the field by the Parish and by the Fete Committee.*” Mr Bates asked whether it could be made any clearer that this use had been unauthorised.

(21) Mr Bates continued by saying that the fete committee always confirmed the date of the fete with the head teacher of the school at an early stage in order to avoid the obvious embarrassment and inconvenience of a clash of events. However, under the restrictive terms of the lease of the field, the head teacher was not in any way able to grant *permission* for use on behalf of his school, KCC or the Diocese of Canterbury.

(22) Mr Bates summed up this point by saying that the fete would always go ahead and that fete committee merely wished to collaborate with the school over the date. The head teacher had never refused permission and any such refusal would in any case not have been accepted by the fete committee. There had therefore never been a manifest act of exclusion.

(23) Mr Bates then said that residents were encouraged to buy fete programmes from local shops in advance or on the day to help raise funds. On the day of the fete, volunteers with buckets and a supply of programmes were at some entrances for some of the time. The site remained “porous” as other entry points remained vacant and that there was no attempt to “lock down”. Many people were waved in, regardless of their possession of a programme, whilst whole families sharing a single programme were welcomed.

(24) Mr Bates said that he had consulted current and former organisers of the fete and that it was clear that showing or purchasing a programme had never been a prerequisite to entry to the fete. This was because not all entry points were covered by stewards or because the stewards were giving the benefit of the doubt to anyone who said they had left their programme at home or would buy one later. Tea, coffee and cake were sold in the Church Rooms, and the lavatories were only available on site. Foot traffic between the field and the Church Rooms was considerable and not managed.

(25) Mr Bates referred to his own experience, saying that he had forgotten to buy a programme for this year’s event. He had not been challenged at any point despite

coming and going many times on foot and by car while helping on stalls. He said he knew of at least one other parish councillor who had similarly not been challenged when he had also forgotten to buy a programme.

(26) Mr Bates then said that there was no restriction to access or use of that part of the land which was not actually occupied by the paraphernalia associated with the fete, and that residents who wished to do so were able to continue their sports and pastimes as of right. Those visitors not intending to join in the fete tended to become involved by, for example, listening to live music, stopping for a drink or taking the opportunity to throw a wet sponge at their teacher or scout master held in the stocks. All this “*as of right*” use was to be applauded as it had been organised by the community for the community.

(27) Mr Bates concluded his presentation by saying that he hoped that he had helped the committee to better understand that the organisation and management of the fete as an activity “*as of right*”, and that it would therefore confirm the established legal right of access as a Village Green.

(28) The Chairman asked Mr Bates to comment on a letter from Rev Hornsby, the former Vicar. This letter stated that the sale of programmes represented fees for admission. Mr Bates replied that he had not previously seen the letter, but that he did not agree with its content. He added that Rev Hornsby had never actually sat on the fete organising committee.

(29) Mrs B Stafford (supporter) said that she had manned the Parish Council stand at the fete held in 2010. A small child had been reported missing and a search for her had taken place all over the field. There had been concern that she might easily have left the field because two of the entry points had not been manned. Fortunately, she had eventually been found, safe and well. However, this story demonstrated that Mr Bates was right when he said that access to the site could easily take place unchallenged during the fetes.

(30) Mr R Bushrod said that he had been a local resident since 1983. He had served as a Church Warden. He said that he could confirm that there had not been any attempts to restrict access during church fetes and that the Collectors were always instructed not to do so. He then referred to the phrase “by kind permission of the Headteacher” which appeared on the 1994 village fete flyer from 1994 (Appendix D). He said that this was simply an example of village politeness which was not intended (or understood) literally.

(31) Mr G Boulden (Graham Boulden and Co) spoke on behalf of the landowner. He said that he did not agree with Mr Bates’ description of the access arrangements as “porous”. The site had become more regulated after 1996 when the footpath had been constructed.

(32) Mr Boulden then referred to the fete flyer (Appendix D) noting that it contained the words “Entry by Programme.” This, he said would clearly convey to the average person that a right to refuse permission to enter the land would be in effect on the day of the fete.

(33) Mr Boulden also said that use of the footpath did not qualify as a lawful sport and pastime and that a non-statutory public inquiry would afford an opportunity to

build up a more complete picture of the amount of lawful sports and pastimes that had actually taken place. He also asked the Panel to agree that the incident involving the small child mentioned by Mrs Stafford should be understood as a single incident rather than a representative event.

(34) During discussion of this item, Mr Baldock said that he believed that the fact that Canterbury Diocese had been unaware that the land in question was being used for fetes and other organised events indicated that use of the land had been as of right.

(35) Mr T A Maddison moved, seconded by Mr S C Manion that the recommendation of the Head of Regulatory Services be agreed.

Carried 4 votes to 1

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

13. Application to register land at Showfields in Tunbridge Wells as a new Town or Village Green

(Item 6)

(1) The Panel Members visited the application site before the meeting. This visit was attended by Mr R Fitzpatrick (applicant).

(2) The Chairman informed the Panel that the Local Member, Mr J E Scholes had sent his apologies owing to a clash with other County Council business. He had indicated his agreement with the contents of the report.

(3) The Commons Registration Officer tabled aerial photographs of the application site and then explained that the application had been made by Mr R Fitzpatrick under section of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 38 user evidence forms.

(4) The Commons Registration Officer then said that Cllr C Woodward from Tunbridge Wells BC had replied on behalf of himself, Cllr Mrs B Cobbold and Mr J E Scholes to advise that they were happy to support the application whilst having concerns that Village Green status might prevent redevelopment of community facilities from taking place. Tunbridge Wells BC Planning had stated that it had no objection as Village Green status would not conflict with the designation of the site in the Local Plan as a "neighbourhood centre" and "important local space."

(5) The Commons Registration Officer then reported that an objection had been received from Mr Colin Lissenden on behalf of the Town and Country Housing Group on the grounds that part of the site was within its ownership. The objection had also stated that the application would severely affect any future regeneration plans and deter future investment to improve the land in the best interests of the local community.

(6) The Commons Registration Officer went on to inform the Panel that the applicant had requested a number of amendments to be made to the application.

These had been agreed as they accorded with DEFRA's guidance on the principle of fairness and because they did not cause any prejudice to any of the parties involved.

(7) The Commons Registration Officer then turned to the objections from the Landowner, Tunbridge Wells BC. These were that registration of a car park, footpaths, circulation areas and walkways of a building complex were outside the scope and intention of the 2006 Act; that 62% of the users had not used the site for the full 20 year period; that several users referred to the use of the site for a "right of way" type use to access community facilities; that use of the land for organised events had been with the permission of the landowner; and that only 12 of the 2200 local residents had used the land for the full qualifying period, which did not constitute a "significant number."

(8) The Commons Registration Officer went on to consider the legal tests which needed to be met for registration to take place. The first of these was whether use of the land had been "as of right". She said that there was no evidence of use being either with force or secrecy. The landowner had contended that it had granted permission for specific community events to take place and had produced a copy of an agreement with the Number One Community Trust for hire of the land for a fun day in 2009. She said that attendance at fun days and any other organised events were not qualifying uses for the purposes of Village Green registration. There had, however, been no evidence that the fun days and fetes had involved fencing off the land, charging a fee or restricting access in any other way. For this reason, the recent decision in *the R Mann v. Somerset County Council* case did not apply.

(9) The second test was whether use of the land had been for lawful sports and pastimes. The landowner had contended that much of the use had been linear use of the footpath. It was also noted that some of the user evidence referred to use of the site during fetes and fun days. The Commons Registration Officer said that there was sufficient evidence of qualifying use (even when public footpath and organised use was excluded) for this test to be met.

(10) The Commons Registration Officer said that the applicant had specified "Showfields Estate, Tunbridge Wells and Ramslye Estate, Tunbridge Wells" as the qualifying locality. Although this did not meet the test, it was only necessary for the Registration Authority to be satisfied that there was such a locality. In this instance, the Tunbridge Wells BC electoral ward of Broadwater met the criterion.

(11) The Commons Registration Officer went on to consider whether use had been by "a significant number" of residents of the locality. She explained that this was not a quantitative test. Even though the landowner had objected that only 12 of the 2200 local residents had used the land for the entire qualifying period, the test was met because of the site had been sufficient to indicate that it was in general use by the community. She referred to comments from Tunbridge Wells BC Planning in support of her conclusion.

(12) The Commons Registration Officer then said that use of the site for recreational purposes had clearly continued up to the date of application.

(13) The Commons Registration Officer said that the landowner had objected that some 60% of the users had not used the site for the entire qualifying period of 1992 to 2012. She explained that this objection had arisen through a misunderstanding of

the meaning of the test. In fact, the site had been in general use by the community throughout the required period.

(14) The Commons Registration Officer concluded her presentation by referring to the landowner's objection that registration of a car park, footpaths, circulation areas and walkways of a building complex were outside the scope and intention of the 2006 Act. She said that the Commons Act 2006 set out the only criteria for registration and did not specify any conditions in terms of the nature and appearance of the land. Furthermore, the fact that the majority of the land was shown in the Borough Council's Local Plan as being an "important open space" confirmed that the landowner was well aware of its amenity value and the recreational use made of it by local residents. There were also no significant conflicts of fact requiring further research. She therefore concluded that all the necessary tests had been met and recommended that the land in question (as amended in (6) above) be registered as a Village Green.

(15) Mr Manion asked whether the establishment of a children's play area could be seen as implying that use had been with permission. In response, the Commons Registration Officer referred to the *R v City of Sunderland ex parte Beresford* case, where the Court had ruled that putting up apparatus for community use did not constitute a communication of permission.

(16) Mr T Warren (Town and Country Housing Group) said that his company owned all the land around the site. If Village Green registration were to take place, it would stifle their community-led regeneration plans. He contrasted the number of user evidence forms with the 100 residents from Ramslye and 200 from Sherwood who had attended local consultation meetings on his organisation's regeneration proposals.

(17) The Chairman clarified that the Panel was not entitled by Law to consider the representations made by Mr Warren. The Panel had a duty to limit itself to careful consideration of whether the criteria for registration had all been met.

(18) Mr R Fitzgerald (applicant) briefly congratulated the Commons Registration Officer on her report and presentation.

(19) Cllr C Woodward addressed the Panel as a supporter of the application. He said that the land in question represented a community facility. He said that he did not wish to see development inhibited and that registration of the land must not be allowed to constrain opportunities for those who lived in the area.

(20) Mr Richard Harris (Tunbridge Wells BC Legal Services) said that his concern was whether the "significant number" test had been met. There had to be sufficient usage to demonstrate that the land in question was in general use by the community. Yet, only 24 user evidence forms had been presented, representing some 1% of the community. This was an extremely low response. This number was further diminished when the number of people using the footpath "by right" was deducted. He added that the land was in need of a substantial amount of investment and it would be unfortunate if this was jeopardised by such a small number of people.

(21) Following discussion, Mr M Baldock moved, seconded by Mr T A Maddison that the application as amended be accepted as set out in the recommendation in paragraph 58 of the report.

Carried 4 votes to 1

(22) RESOLVED that the applicant be informed that the application as amended in Appendix D of the report to register land at Showfields in Tunbridge Wells as a new Town or Village Green has been accepted and that the land subject to the application (as shown at Appendix D) be registered as a Village Green.

14. Application to register land at South View Road in Tunbridge Wells as a new Town or Village Green

(Item 5)

(1) The Panel Members visited the application site before the meeting. This visit was attended by Mrs M Heasman (applicant).

(2) The Commons Registration Officer said that the application had been made by Mrs M Heasman under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. It had been accompanied by 54 user evidence forms and 9 statements of support.

(3) The Commons Registration Officer then said that the application had originally included a tarmac parking area on the north eastern part of the site. Following an objection from Mr C Lissenden of the Town and Country Housing Group, the applicant had expressed a wish to exclude this part of the site from her application.

(4) The Commons Registration Officer continued by setting out the views of the consultees. Tunbridge Wells BC Planning had stated that it was unable to confirm whether the site had been used “as of right” by a significant number of local residents for lawful sports and pastimes. Tunbridge Wells BC had also replied in its capacity as landowner. It had stated that it did not wish to make any representations in respect of the application.

(5) The Commons Registration Officer went on to say that it was still necessary to establish whether each of the individual tests had been met, even though no objection had been received. She therefore moved on to consider the legal tests.

(6) The first test was whether use of the land had been “as of right.” The Commons Registration Officer said that there was no evidence to suggest that use had been by force or stealth. Furthermore, there had been no indication that the landowner had given permission for use of the land. This included implied permission, as no fetes or other events organised by the landowner had taken place on the land in question.

(7) The Commons Registration Officer then said that there had been use of the land for the purposes of lawful sports and pastimes. The user evidence forms had made reference to a wide range of sports and pastimes, notwithstanding references within them to uses associated with the footpath. As 60 local residents in the neighbourhood of High Brooms had attested to use of the site, it was also clear that use had been by a significant number of inhabitants of a neighbourhood within the locality of Tunbridge Wells.

(8) The Commons Registration Officer then confirmed that use had continued up to the date of application (and beyond) and that use had indeed taken place over the entire 20 year period in question. This was 1992 to 2012 rather than 1991 to 2011 as set out in the report.

(9) The Commons Registration Officer concluded her report by saying that as all the legal tests had been met, she recommended that the land in question (as amended) should be registered as a Village Green.

(10) Mrs M Heasman (applicant) briefly thanked the Commons Registration Officer for the hard work that she had put in to producing a thorough report. She confirmed in response to a question by the Chairman that church groups had organised events on the land.

(11) Mr Manion noted that one of the user evidence forms had stated that bonfires had taken place. He asked whether Mrs Heasman knew whether the landowner had been asked for permission. Mrs Heasman replied that she was not personally aware of this activity. She suggested that it might have happened before the area had been properly grassed over.

(12) Mr T A Maddison moved, seconded by Mr S C Manion that the recommendations of the Head of Regulatory Services be agreed.

Carried unanimously

(13) RESOLVED that the applicant be informed that the application to register land at South View Road in Tunbridge Wells as a new Town or Village Green has been accepted, and that the land subject to the application (as amended and shown in Appendix A of the report) be registered as a Village Green.

15. Application to amend the Register of Common Land for land known as "The Lees" at Yalding (CL14)

(Item 3)

(1) The Commons Registration Officer said that the application had been received from Mr H Craddock under paragraph 2 of Schedule 2 of the Commons Act 2006.

(2) The Commons Registration Officer briefly explained that Common Land was defined as land subject to traditional rights or "rights of common." These areas were included within the definition of "Open Access Land" which gave the public the right to gain access on foot.

(3) The land which was the subject of the application had been included in a scheme of regulation and management made under the Commons Act 1899 which permitted District Councils to make schemes of management for common land.

(4) The Commons Registration Officer said that a scheme of management had been made in 1949 by the Maidstone Rural Council in relation to land known as "The Lees" in Yalding. The applicant considered that certain parts of the land included within the scheme of management had been omitted from the formal registration of the land as common land and that the Register of Common Land should be amended accordingly.

(5) The Commons Registration Officer went on to explain that the Panel needed to satisfy itself that the land was not currently registered as Common Land or Village Green and that it had never been finally registered as such. It also needed to be satisfied that the land was either regulated by an Act made under the Commons Act 1876, or subject to a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899, or regulated as common land under a local or personal Act, or otherwise recognised or designated as common land by or under an enactment.

(6) The Commons Registration Officer said that an objection had been received from KCC Governance and Law on behalf of the County Council's Highways and Transportation Team. This objection set out that those sections of the application site that formed part of the public highway should not be included within any subsequent registration. It was also stated that if the application were to succeed, it would impact on the County Council's statutory duty to assert and protect the rights of the public in relation to the public highway.

(7) The Commons Registration Officer explained that the concerns raised by the objector were not a material consideration. She then said that it was clear that the scheme of management had clearly intended the inclusion of the roads regardless of whether they would have been subsequently capable of formal registration under the later Commons Registration Act 1965. She therefore recommended accordingly.

(8) The Chairman read out correspondence received from Ms V Clothier (KCC Governance and Law) on behalf of the objector.

(9) Mr T A Maddison moved, seconded by Mrs V J Dagger that the recommendations of the head of Regulatory Services be agreed.

Carried unanimously

(10) RESOLVED that the applicant be informed that the application to amend the Register of Common Land to register additional areas of Common Land has been accepted (as shown in Appendix D of the report) and that the Register of Common Land for unit number CL41 be amended accordingly.

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REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Kingsnorth Sports Pavilion, Church Road, Kingsnorth, Ashford TN23 3EF on Tuesday, 15 October 2013.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr M Baldock, Mrs V J Dagger and Mr T A Maddison

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

IN ATTENDANCE: 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 at Grasmere Road in Ashford as a new Village Green *(Item 3)*

(1) The Panel visited the application site before the meeting. This visit was attended by Mrs L Dash (applicant).

(2) The Commons Registration Officer began her presentation by saying that the application had been made under section of the Commons Act 2006. It had been accompanied by 72 user evidence forms and other supporting documentation.

(3) The land in question had been given to Ashford BC in 1974 by Rush and Thompkins who had built the houses around the land. The local residents had used it as a recreational area and community hub.

(4) The Commons Registration Officer confirmed that Ashford BC had been consulted in its capacity as the landowner. In response, the Borough Council had stated that it would not be opposing the application.

(5) The Commons Registration Officer said that registration could only take place if each of the legal tests was met, even though the landowner was not opposing the application. The first test was whether use of the land had been "as of right." She said that access was free and unhindered and that there was no evidence of use having been with permission. She therefore considered that this test had been met.

(6) The Commons Registration Officer replied to a question from Mr Manion by saying that the "No Golf" sign that had been put up by the Borough Council certainly disqualified that particular activity from being considered as a lawful sport or pastime. It could not, however, be used as evidence that use of the site had been "as of right" because case law had established that any such sign had to communicate to the local inhabitants that the landowner was giving them permission to use the land. A statement that golf could not be played on the land did not serve this purpose.

(7) The Commons Registration Officer said that the user evidence forms had described a wide range of activities. It was therefore clear that the land had been used for lawful sports and pastimes.

(8) The Commons Registration Officer said that the town of Ashford was a qualifying locality and that Bockhanger with its primary school, shops and community centre, qualified as a neighbourhood within the locality. It was also clear that 71 people from this neighbourhood had personally used the site. This meant that use had been by a sufficient number of local inhabitants to indicate to the landowner that the land in question was in general use. She had therefore concluded that use had been by a significant number of inhabitants of a neighbourhood within a locality.

(9) The Commons Registration Officer concluded her presentation by saying that the final two tests had also been met as use of the land had continued for more than twenty years up to and beyond the date of application. She recommended that, as all the legal tests had been met, registration should take place.

(10) Mrs L Dash (applicant) thanked the Commons Registration Officer for her helpfulness in guiding her through the process. This help had been invaluable to her as she had never previously been involved in any form of official public activity.

(11) Mr J N Wedgbury (Local Member) congratulated Mrs Dash on her work in preparing the application. He commented that he was delighted to see this area of land being designated as a Village Green.

(12) Mr S C Manion moved, seconded by Mr M Baldock that the recommendations of the Head of Regulatory Services be agreed.

Carried unanimously

(13) RESOLVED that the applicant be informed that the application to register land at Grasmere Road in Ashford in Ashford as a new Town or Village Green has been accepted, and that the land subject to the application be registered as a Village Green.

17. Application to register land at Riverside Close at Kingsnorth as a new Town or Village Green

(Item 4)

(1) The Panel visited the application site before the meeting.

(2) The Commons Registration Officer began her presentation by saying that the application had been made by Kingsnorth PC under section 15 of the Commons Act 2006. It had been accompanied by 22 user evidence forms and other supporting documentation.

(3) The land in question was owned by Ashford BC. The Borough Council had provided written confirmation that it had no objection to the application.

(4) The Commons Registration Officer moved on to consideration of the legal tests, which all needed to be met if registration was to take place. She said that there were no restrictions on entrance to the site and that there was also no evidence that

the landowner had ever granted permission for people to do so. Use of the land had therefore been “as of right.”

(5) The Commons Registration Officer then said that the user evidence forms had described a range of activities. The land in question had therefore been used for the purposes of lawful sports and pastimes.

(6) The Chairman noted that Ashford BC had put up some swings on the land. He asked whether the Borough Council would continue to be responsible for them. The Commons Registration Officer confirmed that this would be the case.

(7) The Commons Registration Officer said that use had been by residents of the neighbourhood of Kingsnorth Village within the locality of Kingsnorth Parish. Half the residents of Riverside Close in Kingsnorth Village had provided evidence that they had used the land. This would have been enough to indicate to the landowner that the application site was in general use by the local community. Accordingly, the site had been used by a significant number of inhabitants of a neighbourhood within a locality.

(8) The Commons Registration Officer concluded her presentation by saying that the final two tests had also been met as use of the land had continued for more than twenty years, up to and beyond the date of application. She therefore recommended that, as all the legal tests had been met, registration should take place.

(9) Mr Manion asked whether the fact that Ashford BC had put up swings on the land could be seen as giving implied permission. The Commons Registration Officer replied that this question had been addressed in the *Beresford* case. The court had ruled that putting up equipment to encourage use did not communicate a permission which could be revoked. The same principle applied in respect of this application.

(10) Mr J N Wedgbury addressed the Panel in his capacity as a Member of Kingsnorth PC. He thanked the Commons Registration Officer for producing a comprehensive report and explained that the long term plan was for Ashford BC to pass the land to Kingsnorth PC and protect the access to it.

(11) Mr M J Angell addressed the Panel as the Local Member. He said that the history of Ashford BC’s plans for the land in question and any future plans it might have for land ownership were entirely irrelevant. He asked the Panel to concentrate entirely on the question of whether the legal tests had been met.

(12) Mr M Baldock moved, seconded by Mrs V J Dagger that the recommendations of the head of Regulatory Services be agreed.

Carried unanimously

(13) RESOLVED that the applicant be informed that the application to register the land at Riverside Close at Kingsnorth as a new Village Green has been accepted and that the land subject to the application be formally registered as a Village Green.

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REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Kingsmead Leisure Centre, Kingsmead Road, Canterbury CT2 7PH on Tuesday, 26 November 2013.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr M Baldock and Mr C W Caller

ALSO PRESENT: Mr G K Gibbens

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

UNRESTRICTED ITEMS

18. Application to register land known as Kingsmead Field in Canterbury as a new Town or Village Green (Item 3)

(1) Members of the Panel visited the application site before the meeting. This visit was attended by Ms S Pettman and Mr B Gore on behalf of the applicants and Mr R Griffith from Canterbury City Council.

(2) Before making her presentation, the Commons Registration Officer noted that the applicants had very recently sent representations individually to Members of the Panel. In the light of the comments contained within them, she had sought further advice from Counsel. This advice had been received within the previous 12 hours, and supported the conclusions set out in the report.

(3) The Commons Registration Officer began her presentation by saying that the application had been made by Ms A Bradley, Ms S Langdon and Mr M Denyer under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 335 user evidence forms and other evidence (including maps showing the site and relevant localities, photographs of the site, extracts from Canterbury CC's register of Council-owned land, and various statements from local students). Documents relating to the City Council's proposal to dispose of the land for development purposes had also been included, and the Commons Registration Officer explained that they needed to be disregarded by the Panel for the purposes determining whether to register the land in question as a Village Green.

(4) The Commons Registration Officer went on to set out the case put forward by the applicant. This was that the site had been used by local inhabitants for a range of activities "as of right" for more than 20 years.

(5) The Commons Registration Officer then described the responses from consultees. Over 100 supporting messages had been received including a letter from the Local Member, Mr G K Gibbens.

(6) The Commons Registration Officer continued by saying that the site was owned by Canterbury City Council apart from a small section on the northern boundary, which was owned by Berkeley Homes PLC.

(7) Canterbury CC had objected to the application on the grounds that it held the land under their power to provide public recreational facilities, which meant that use of the land by the public had been “by right” rather than “as of right.” No objection had been received from Berkeley Homes.

(8) The Commons Registration Officer moved on to consideration of the individual tests for registration to take place. The first of these was whether use of the land had been “as of right”. She said that use had clearly not been by force or stealth. In this case, however, the land had been held by the City Council as land appropriated for public recreation in 1967 for “use as a playing field” under section 163 of the Local Government Act 1933 (replaced by section 144 of the Local Government 1972 and then by section 19 of the Local Government (Miscellaneous Provisions) Act 1976).

(9) The Commons Registration Officer referred to case law. Lord Walker had noted in the *Beresford* case that it would be very difficult to regard people who used land appropriated for public recreation as trespassers. This had been supported in the *Barkas* case by Sullivan LJ who had ruled that when an application site had been appropriated for the purposes of public recreation under an express statutory power, the local inhabitants would have indulged in lawful sports and pastimes on that land “by right” and not “as of right.”

(10) The Commons Registration Officer noted a secondary issue in relation to the fact that the land had been hired out for formal events such as circuses and funfairs. The City Council had relied on the *Mann* case in support of its view that occasional exclusion from part of the land was sufficient to communicate to users that their use of the whole land at other times was with the landowner’s permission. The applicants, however, disputed this view, pointing out that the City Council had never attempted to exclude people from the site and that no charges had ever been made for entry to the funfair. The charge for admission to the circus had been in respect of the performance rather than for admission onto the land itself. In their view, the use of the land for formal events had coexisted peacefully with the concurrent use of the application site for lawful sports and pastimes.

(11) The Commons Registration Officer said that it was unnecessary to consider the question of formal events on the site in detail because the appropriation of land issue was, in itself, sufficient to demonstrate that use had been “by right” and not “as of right.”

(12) The Commons Registration Officer then briefly turned to the other tests. She said that all parties agreed that the land had been used for the purposes of lawful sports and pastimes. The evidence also suggested that a significant number of residents of the neighbourhoods of Northgate and St Stephen’s within the City of Canterbury locality had used the site. Use of the land had continued up to and beyond the date of application over the required period of twenty years.

(13) The Commons Registration Officer summed up by saying that regardless of her view that all the other tests appeared to have been met, the application had failed

to meet the “as of right” test because it had been held by the City Council for the purposes of public recreation, representing a “knock out” blow to the application. She therefore recommended accordingly.

(14) Mr Baldock asked whether at any stage during the requisite period, the land in question had been used for any other purpose apart from public recreation. The Commons Registration Officer confirmed, in reply, that it had always been held for recreational purposes during the 20 year period.

(15) In response to a question from Mr Baldock, the Commons Registration Officer said that Village Green rights could not be acquired in any way whilst the land in question was statutorily held by a local authority for recreational purposes.

(16) Mr Barrie Gore addressed the Panel as a supporter of the application. He said that the *Barkas* case had been considered by the Court of Appeal but that it was now due to be considered by the Supreme Court in April 2014. Its eventual verdict would clarify the legal position in respect of this particular application. He considered it very possible that the Appeal Court judgement would be reversed and suggested that consideration of this application should be delayed pending the Supreme Court judgement.

(17) Mr Gore said that following receipt of the agenda papers, Counsel’s opinion had been sought and sent to some of the Panel Members. He believed that this opinion should be a part of the evidence base for consideration of the application. He stressed the argument made by the applicants’ counsel that the Local Government (Miscellaneous Provisions) Act 1976 did not enable Canterbury CC to appropriate land at all and that it simply enabled it to provide recreational facilities. It was on this basis that the *Barkas* case had been given leave to proceed to the Supreme Court. The most equitable course of action would be to delay the decision because it had a direct bearing on the outcome of this case. It would clarify the position in respect of “as of right” use, which was the only test that this application was currently considered to have failed to pass.

(18) The Commons Registration Officer advised that the Panel should deal with the application on the basis of the law as it stood. To do otherwise would be prejudicial to the landowner who was entitled to a timely decision. She added that her recommendation did not rely on the *Barkas* case so much as the *Beresford* case which was most pertinent.

(19) Mr Gore said that the comments made by Lord Walker in *Beresford* were not, in fact, a part of the judgement in this case. This was a further complication in what was already a very complex area of law which the Supreme Court would be able to resolve.

(20) Mrs Sue Langdon (applicant) said that she agreed with Mr Gore’s view that the decision should be delayed pending the outcome of the *Barkas* case in the Supreme Court. This was the only fair course of action, particularly as the decision could be expected in June 2014. Given the likelihood that *Barkas* would finally clarify the legal position and enable the Panel to be fully confident that its decision was both fair and lawful, natural justice demanded that the requested delay should be granted. Should the Panel decide to turn down this request, the applicants would seek to judicially review the decision.

(21) The Commons Registration Officer said that *Barkas* related to a provision within the Housing Acts. Its significance in this case was that Sullivan L J's ruling had approved Lord Walker's statement in *Beresford* as part of the judgement, confirming the law in respect of "as of right" use.

(22) Ms Janet Taylor (Canterbury CC) said that she had received Counsel's opinion in response to the late submission provided direct to the Panel Members by the applicants. This set out that the City Council could not hold land by virtue of a legal vacuum. The land had been acquired in 1967 under section 163 of the Local Government Act 1933. This Act had been modified and replaced and was currently held under section 19 of the Local Government (Miscellaneous Provisions) Act 1976 which gave very wide powers to a local authority to provide land for recreational purposes in such a way as it deemed fit. This meant that use of the land had been with permission and invitation.

(23) Mr Alex Davies (Berkeley Homes PLC) said that he did not wish to comment.

(24) The Chairman invited comments from the public. One comment was made in respect of the sign put up on the site by Canterbury CC. The ruling in *Beresford* had been that permission had to be communicated and revocable to indicate that use of the land was by licence.

(25) The Commons Registration Officer replied to the previous point by saying that the sign did not convey permission but was consistent with the fact that the City Council had provided the land for public recreation.

(26) Mr G K Gibbens (Local Member) said that Kingsmead Field sat in the middle of his electoral ward. Its status had been one of the two main issues during the Local Government elections in May 2013.

(27) Mr Gibbens went on to say that the field was widely used by local residents for relaxation, dog walking and games. It was the only green space for some considerable distance, which was important in the context of Northgate, one of the most deprived wards in Kent.

(28) Mr Gibbens noted that four of the required tests had been met and that the only area of dispute was whether use had been by right or as of right. This issue was a key point in the *Barkas* case which was going forward to the Supreme Court in April 2014.

(29) The "as of right" test was very contentious and the subject of substantial case law. However, he did not believe that there was any case law which specifically related to the provisions of section 19 of the Local Government (Miscellaneous Provisions) Act 1976 within Village Green law at present. The *Barkas* case was expected to clarify a number of outstanding issues in relation to Village Greens and publicly owned land, including the status of the Local Government (Miscellaneous Provisions) Act. He therefore believed that it would be prudent for the Panel to defer taking a decision until the Supreme Court had considered the *Barkas* case and given its ruling.

(30) Mr Gibbens concluded his remarks by saying that the residents had already been very clear in their views and hoped that in due course Village green status would be granted. They would be surprised and disappointed if the Panel were to reject the application whilst the outstanding case was being considered in the Supreme Court and very shortly before that court had given its ruling. Postponing the decision seemed to be the only fair and reasonable thing to do, and would have no cost implications for either KCC or Canterbury CC.

(31) Mr Baldock suggested that a Public Inquiry could be held in accordance with the applicants' request. The Commons Registration Officer advised that a Public Inquiry would only be appropriate if there was a serious factual dispute, but in this case the City Council accepted that the land had been used for recreational purposes and the case turned on an interpretation of the Law. As such, it was not necessary to hold a Public Inquiry.

(32) Mr S C Manion moved and it was duly seconded that the recommendations of the Head of Regulatory Services be agreed.

Lost 3 votes to 1

(33) Mr M J Harrison moved, seconded by Mr C W Caller that consideration of this application be adjourned pending the judgement of the Supreme Court in respect of the *Barkas* case.

Carried 3 votes to 1

(33) RESOLVED that consideration of this application be adjourned pending the judgement of the Supreme Court in respect of the *Barkas* case.

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REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Ripple Village Hall, Pommeus Road, Ripple CT14 8JA on Tuesday, 26 November 2013.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr M Baldock and Mr C W Caller

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

UNRESTRICTED ITEMS

19. Application to register land known as Coldblow Woods in the parish of Ripple as a new Town or Village Green (Item 3)

(1) Members of the Panel visited the application site before the meeting. This visit was attended by Mr R Chatfield (applicant), the landowner, Mr N Fielding (with Rhodri Price-Lewis QC and Ms J Laver - Fuller Long Planning Consultants) and some 20 members of the public.

(2) The Commons Registration Officer began her presentation by saying that the application had been made by Mr R Chatfield under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 124 user evidence forms and other evidence (including Land Registry searches, a detailed history and use of the site, photographs showing various activities taking place on the site and a letter from Ringwoud Cricket Club). A further 202 user evidence forms had subsequently been submitted.

(3) The Commons Registration Officer went on to set out the case put forward by the applicant. This was that the site consisted of two plots of land. The northern section had been owned by the MoD until it was sold to Ledger Farms in the 1970s. The southern section had also been owned by the MoD until being sold to a local family in 1992. The current owner of the southern section, TG Claymore had erected barbed wire and taken other action to restrict access in August 2012. Up to this point, the applicants claimed that residents had enjoyed unrestricted access and use of the site for more than 30 years.

(4) The Commons Registration Officer then described the responses from consultees. Ripple PC had indicated that it neither supported nor opposed the application. Deal TC has written in support, stating that the local population had made continued use of the land for lawful sports and pastimes for many years and that this activity had remained unchallenged until very recently. A petition containing over 1700 signatures in support of the application had also been received (although this was of little value as evidence of use). The Local Member, Mr S C Manion had given a neutral response. There had also been over 100 e-mails and letters of support as well as a letter of objection from a member of the public.

(5) The Commons Registration Officer continued by saying that the landowners were represented by Fuller Long Planning Consultants who had objected to the application on the grounds that informal use of the site had been sporadic and insufficient to notify a reasonable landowner that a public right was being asserted; that there had been a break in the twenty year period of use in 1999/2000 when the land had been occupied by travellers; that the alleged use had only been attested by some 2% of the local population, which was not a significant number; that use of the land had been by stealth to a significant degree; and that any use had been contentious and therefore by force as the landowners had done everything that was reasonably possible to stop unauthorised use through fencing, signage and challenges.

(6) The landowners' objections had been supported by six statutory declarations. The Commons Registration Officer summarised this evidence which was that the southern section had been owned by the MoD until it was sold to Mr Luckhurst in November 1992, three months into the material period. Whilst in the ownership of the MoD the land had been securely fenced with locked gates and "No Admittance" signs along the boundary. The land had actually been advertised as "fenced" for the purposes of the auction when Mr Luckhurst had purchased it. From 1993, openings had started to appear in the fencing and chains and padlocks had been stolen. Replacement fencing and padlocks had been provided up to 1996 when Dover DC had issued a direction prohibiting fencing of the land. The land had then been occupied by travellers in 1999/2000 which would have provided a disincentive to informal recreation.

(7) The statutory declarations had also given evidence in respect of the northern section of the land. This was that Mr Ledger, the landowner had made regular visits to the area. He had become aware of the use of the woodland and had attempted to discourage use by spreading slurry in the woodland on numerous occasions and by closing gaps in fencing and erecting earth banks. This was because he had been concerned about possible damage to crops on the adjacent field (which he also owned).

(8) The Commons Registration Officer moved on to consideration of the individual tests for registration to take place. The first of these was whether use of the land had been "as of right". She said that the landowners' position and supporting evidence was that the land had been securely fenced in the early 1990s with no public access being permitted. After acquiring the land, the landowners had attempted to prevent use by erecting fences, spreading slurry, using tree trunks and earth banks to bar access and by challenging people who used the land. Dover DC had prohibited fencing on the land in 1996. This had led to anti-social behaviour and the occupation of the site by travellers in 1999. In the early 21st century, a ditch and bund had been constructed to restrict access. The landowners' contention was therefore that they had taken every reasonable step to deter access to the site but that their efforts had been met with vandalism.

(9) The Commons Registration Officer then said that the applicant's evidence differed in many ways from that of the landowners. He said that the site was bordered on all sides by public rights of way or by Coldblow Road, and that this had led to a significant number of residents entering the land through an easy access. Furthermore, there was a lack of fencing between the northern and southern sections

of the land, permitting people to pass unobstructed between them. There had never been any fencing around the northern plot, whilst the chain link fencing around the southern section had been broken down or had fallen down well before the MoD had vacated the land in 1992. Access had been free and easy until late 2012 when barbed wire and earth ramparts had been erected by the owner of the southern section.

(10) The applicant had provided two pieces of evidence to support his contention of general usage. An aerial photograph dated 2008 showed well-defined tracks across the whole grassland area, whilst the Dover DC "Statement of Reasons" of 1996 (which prohibited the erection of fencing) described the land as "*mainly neglected grassland and, apparently used by the general public informally.*"

(11) The applicant had also refuted the landowners' evidence of challenges to use having been made. He stated that the gap described by the applicant had only been barricaded to prevent access and damage to crops. This had not prevented access to or within the woodland. He also stated that although slurry had been spread on the adjacent field, this had not happened in the woodland and that it would not have been possible for a tractor or slurry tanker to access it.

(12) The applicant had also commented on the landowners' contention that the land had been secured by fencing and notices during the period when it was MoD property. He noted that the landowners' witnesses had provided various versions of the alleged wording on the signs and considered it unlikely that they would have been maintained after the MoD had ceased to actively use the site in the late 1970s. A number of user evidence questionnaires had referred to notices on the site but none of them had forbidden entry. Meanwhile, contemporaneous evidence from the 1990s strongly suggested that the fencing had not been at all secure during this period. It seemed highly improbable to him that the fencing could have deteriorated during the period 1992 to 1996 when Dover DC's Statement of Reasons had described the state of the land as "neglected."

(13) The Commons Registration Officer concluded her analysis of the "as of right" test by explaining that when a serious conflict of factual evidence of this nature occurred, the officers did not have the powers to undertake any further investigation themselves. It was therefore not possible at this stage to conclude whether use of the site had taken place "as of right."

(14) The Commons Registration Officer turned to the question of whether use of the land had been for the purposes of lawful sports and pastimes. She said that although some of the use had been associated with the public right of way, there was sufficient evidence for her to conclude that, due to the range of recreational activities, this test appeared to have been met.

(15) The next test was whether use had been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality. The Commons Registration Officer said that this test had been met because the administrative parish of Walmer was a qualifying locality and the volume of evidence submitted strongly suggested that the land was in general use by the local community during the relevant period.

(16) The Commons Registration Officer briefly explained that the application had been made in November 2012 which was well within the period when use had been challenged in August of that year by prohibitive notices and the erection of barbed wire fencing. The application had therefore been made within the two year grace period set out in the Commons Registration Act. The land had also been in use for longer than the required period of 20 years. This meant that the final two tests had been met, subject to the question of whether this use had been “as of right.”

(17) The Commons Registration Officer concluded her presentation by saying that the ability of the land to be registered as a Village Green hinged on the question of whether the use of the site had been “as of right.” The most effective way of establishing the answer to this question was through the mechanism of a Public Inquiry, enabling the evidence to be tested by an independent Inspector who would produce a report on his or her findings to the Registration Authority. She therefore recommended accordingly.

(18) Mr Baldock asked whether the Panel was entitled to register part of the land. He suggested that the Panel could decide to register the northern section. The Commons Registration Officer replied that it was open to the Panel to register only part of the application site, but she considered that there was a sufficient level of confusion in respect of the entire application site to make a Public Inquiry into the application as a whole the safest option.

(19) The Chairman asked whether, in the light of the recommendation, any of the parties wished to address the Panel. The applicant, Mr Chatfield said that he did not wish to speak beyond confirming that the records he would be relying on were held by Dover DC.

(20) Rhodri Price-Lewis QC addressed the Panel on behalf of the landowners. He said that he did not believe that the applicant had been able to prove his contention that use of the land had been “as of right.” The existence of signs and fencing demonstrated that use had been contentious and therefore by force. This was underlined by the acceptance by all parties that signs had been broken down over time. He then referred to the three months at the beginning of the twenty year period in 1992 when the land had been owned by the MoD. He said that when Mr Ledger had participated in the auction, he had been informed in writing that the land was fenced. He added that he did not accept that a significant number of residents of the locality of Walmer had used the site.

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

(22) RESOLVED that a Public Inquiry be held into the case to clarify the outstanding issues.

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Lympne Village Hall, Aldington Road, Lympne CT21 4LE on Tuesday, 3 December 2013.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mrs V J Dagger and Mrs E D Rowbotham

ALSO PRESENT: Miss S J Carey

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

UNRESTRICTED ITEMS

20. Application to register land at Folkestone Racecourse in the parish of Stanford as a new Town or Village Green *(Item 3)*

(1) The Panel Members visited the site of the application prior to the meeting. This visit was attended by the applicant, Mr D Plumstead; Mr K Bultitude, Chairman of Stanford PC; and the landowner's representatives, Mr R Mr S Charles and Mr R Longstaff-Tyrell.

(2) The Commons Registration Officer began her presentation by saying that the application had been made by Mr D Plumstead under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 30 user evidence questionnaires and various plans and photographs showing the application site. The site itself was some 9 acres in size and was bounded on its northern side by a public footpath. Access to the site was through the main entrance to the racecourse on Stone Street.

(3) The Commons Registration Officer then described the responses from consultees. Stanford PC had written in support of the application. Shepway DC had written in opposition, as it considered that the application was without merit and stating that it wished to see the area developed in future.

(4) The Commons Registration Officer continued by saying that the landowners were Folkestone Racecourse Ltd. They were represented by K&L Gates LLP who had objected to the application on the grounds that use of the site had not been by a significant number of the residents of the locality; that a number of the recreational uses referred to by the users had not taken place on the site, as this would have been impossible due to the use of the land for car parking; that use for formal events had been with the permission of the landowner; that informal use had been contentious by virtue of various challenges; and that use had taken place in the evenings and at weekends when the landowner would not have had the opportunity to challenge it.

(5) The landowner had also provided a statutory declaration from Mr R Longstaff-Tyrell, who had been responsible for maintenance of the site and had visited it monthly between 1997 and 2005. He had challenged access to the racecourse made by local residents via the rear access gates and had challenged a jogger in the mid 2000s. He had also stated that gates had been erected in 2006 together with signs prohibiting dog walking.

(6) The Commons Registration Officer moved on to consideration of the individual tests for registration to take place. The first of these was whether use of the land had been “as of right”. She said that although the landowner contended that use of the land for formal events had been permissive, it was the applicant’s contention that this use was not relied upon for the purposes of establishing “as of right” use. There was in fact no evidence to suggest that the landowner had granted permission to anyone to engage in *informal* recreational activities on the site.

(7) The Commons Registration Officer then referred to Stanford PC’s newsletter of December 2009 which referred to the landowner’s change in attitude towards informal use. It noted that *“the racecourse has for many years been used by residents to walk, jog or exercise their dogs but in recent months this has been prevented.”* Whilst this clearly demonstrated that by late 2009 the landowner had communicated his clear resistance to that use, it also appeared that use of the land in question had indeed taken place “as of right” until mid 2009 when the landowner’s change of approach had taken place.

(8) The Commons Registration Officer turned to the question of whether use of the land had been for the purposes of lawful sports and pastimes. She said that the user evidence forms gave evidence of blackberrying and ball games. She noted that the landowner claimed that many of the witnesses were unclear as to the boundary of the application site and had given evidence of activities which could not have taken place on the application site itself. She had, nevertheless, concluded that there was sufficient evidence to indicate that the application site had been used by local residents for the purposes of lawful sports and pastimes.

(9) The next test was whether use had been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality. The Commons Registration Officer said that this test had been met because Westenhanger qualified as a neighbourhood within the administrative parish of Stanford, and the user evidence provided by 30 local residents was sufficient to indicate to the landowner that the land was being used for recreational purposes.

(10) The Commons Registration Officer had previously referred to the Stanford Parish newsletter of December 2009 which had accepted that informal use of the site had begun to be challenged (and therefore become contentious) in the middle of that year. She then said that the date of application (shown at Appendix B to the report) was 6 June 2012. This meant that the application had been made outside of the two-year period of grace set out in section 15 (3) of the Commons Act 2006. This meant that the application had failed the test of *“whether use of the land “as of right” by the inhabitants has continued up until the date of application or, if not, ceased no more than two years prior to the making of the application.”*

(11) The Commons Registration Officer briefly confirmed that the evidence submitted in support of the application demonstrated that use had taken place over the twenty year period between 1989 and 2009.

(12) The Commons Registration Officer concluded her presentation by saying that the application had to pass all of the tests set out in the Commons Act 2006 in order to succeed. As the application had not met the test of having been made within the required two-year grace period, it had failed to do so. She therefore recommended that registration should not take place.

(13) Mr K Bultitude (Chairman of Stanford PC) said that the Parish Council had challenged the landowner's change of attitude to recreational use of the site in November 2009. The landowner had confirmed that there would be no softening of its position. The purpose of the newsletter of December 2009 had been to urge restraint whilst the PC looked for lawful means to enable the residents to regain their lost rights. The Parish Council had then decided to begin the process of registration as a village green and had asked Mr Plumstead of the Shepway Environmental and Community Network to manage the process on its behalf.

(14) Mr Bultitude went on to say that Mr Plumstead had organised the compilation of evidence and had contacted him in August 2011 to confirm that the application was ready for despatch and requesting a letter of endorsement. Mr Bultitude had written this on 1 September 2011 and addressed it to the Commons Registration Officer. As far as Stanford PC was concerned, the application was therefore ready by that date.

(15) Mr Bultitude continued by saying that it now appeared (to the surprise of the Parish Council) that the application had not been submitted until June 2012. This was well after two years after 2009 which was believed to be the time when the racecourse had imposed a ban on public recreation. This was the only reason why the application appeared to have failed.

(16) Mr Bultitude questioned whether the date of November 2009 had been established within law as the beginning of the prohibition. The issue had certainly become contentious at that time and the parish council had accepted it in the spirit of conciliation and because it felt powerless to confront the resources of Arena Leisure. He asked whether this was sufficient proof in law to establish that use of the land was no longer "as of right." He added that no formal notification had been on display at that time, declaring that use was now prohibited.

(17) Mr Bultitude commented that notices prohibiting dog walking had been displayed in 2009, but that the report made it clear that this was not sufficient to prevent other forms of recreation. No other public notices had been displayed until the last few days and no notice had been given in public places such as the local media. Indeed, the report made no mention of the racecourse asserting that it had done so. He therefore submitted that Arena Leisure had not established a watertight legal prohibition on public recreation in 2009 and had not done so since. If this was the case, the application would not be out of date and ought to be allowed.

(18) Mr Bultitude concluded his presentation by saying that the report accepted every aspect of the applicant's case with the exception of the time lapse between the date of the ban and the date of submission. Accordingly, he asked the Panel to

accept the application or, failing this, to adjourn the meeting so that the timing and legal reality of the ban could be professionally evaluated.

(19) In response to Mr Bultitude, the Commons Registration Officer said that the Parish newsletter of December 2009 had not only referred to dog walking, but also to walking and jogging. The Law did not insist on the landowners putting up notices and placing advertisement in the local media. It only required them to take sufficient action to demonstrate to the public that informal use was being challenged. The text of the December 2009 Parish newsletter proved that this had been achieved.

(20) Miss S J Carey (Local Member) said that it was sad to see that the case was likely to fail on a technicality. She could understand that the landowners would wish to stop dog walking but this seemed to be the only activity that had been challenged.

(21) The Chairman noted that there had been a challenge to blackberrying in 2007.

(22) Mr D Plumstead (applicant) said that the relationship between the landowners and the Parish Council had always been comfortable and that the Parish Council had taken pains to ensure that this continued. He accepted that challenges had taken place in 2009 but noted that there had been no record of any formal prohibition. It would not create any material difficulty if the Panel adjourned to look into the legal position as requested by Mr Bultitude.

(23) Mr R Longstaff-Tyrell (Arena Racing Company) made representations on behalf of the landowner, Folkestone Racecourse Ltd. He said that he was a building surveyor and property executive, responsible for general estate management issues and had been associated with Folkestone Racecourse since 1983.

(24) Mr Longstaff-Tyrell said that Arena had sought advice from the law firm K&L Gates in the preparation of its representations, and in opposing this application. He had made two statutory declarations, both dated 1 March 2013 which were submitted as part of the representations of the landowner opposing the application.

(25) One of the statutory declarations included the draft declaration of the racecourse manager at Folkestone Racecourse from June 2003 until December 2012. She had been responsible for the everyday running of the racecourse until being made redundant in December 2012 on the closure of the racecourse. It had become evident in February 2013 that she no longer wanted to assist Arena in respect of the application. However, having referred to e-mails that she had sent over the preceding three years, he was able to confirm that the contents of her draft declaration were correct to the best of his knowledge.

(26) Mr Longstaff-Tyrell then said that Arena agreed with the recommendation that the application should be refused. Section 15(3) of the Commons Act 2006 provided that an application could only be made if the use of the land 'as of right' had ended no more than two years prior to the date of the application. He referred to the extract from the Parish Council's December 2009 newsletter in Appendix D of the report. The Parish Council in this newsletter accepted that local people did not have a right to go onto the Folkestone Racecourse site. It stated that "*health and safety complicates all our lives and we have had to accept the new regime*". it was Arena's view that local people had never had a right to go onto the site, and that the "new regime" was just an enforcement of Arena's existing position.

(27) Mr Longstaff-Tyrell then referred to Appendix B of the report where the application form was set out, dated 1 June 2012. As the Parish Council accepted that informal public use of the site had ceased by December 2009 and the application form was dated more than 2 years after this, failure to submit an application within the statutory time period allowed was certainly a “knock out blow” to their application, and to allow this application would be contrary to the Commons Act 2006. He noted that the applicant had stated in Box 4 of the application form that the application was made under section 15 (2) of the Commons Act. If the Parish Council accepted that its use had ceased by December 2009, then an application made under that section could not succeed.

(28) Mr Longstaff-Tyrell went on to say that Arena did not accept the Officer’s view, that each of the criteria necessary for a site to be registered, had been satisfied. This was because the burden of proof rested with the applicants to show that each of the legal tests had been satisfied. K&L Gates had referred in their statement to a Court of Appeal judgement dealing with a village green application. The Case Judge had stated that “*it is no trivial matter*” for a landowner to have land registered as a village green, and that accordingly all criteria had to be “*properly and strictly proved*”. The designation of this area of the racecourse as a village green would restrict the options for the future use of the racecourse, greatly reducing any development options or relocation of racecourse facilities.

(29) Mr Longstaff-Tyrell said that the standard of proof that the applicant had to reach was that “*on the balance of probabilities*” all of the necessary criteria had been satisfied. The representations submitted by Arena set out in detail, why each of the criteria had not been “*properly and strictly proved*.” He then highlighted a few key points in support of his view.

(30) Mr Longstaff-Tyrell said that clearly some of the witnesses in Appendix C did not know which area of land was the subject of the application, as several references had been made to gates at the end of their garden opening onto the racecourse.

(31) Mr Longstaff-Tyrell added that reference has also been made to a number of activities that could not have taken place without the knowledge of landowner. These were a boot fair, the East Kent Show, annual village cricket matches, the pony club, pigeon racing, use by Brownies and Guides, camping, a scout jamboree, a jazz festival, fireworks on bonfire night, a circus, an antiques market, a spanish horse exhibition, stock car racing, a fun fair and a car show. These were events that local people would have been invited to attend and access would have been by the permission of Arena. Therefore the use was not “as of right”, and did not satisfy that criterion. He said that many of the witnesses were clearly under the misapprehension that attending such events constituted “as of right” use, whereas it was, in fact with consent, payment or invitation.

(33) Mr Longstaff-Tyrell then said that if the representations that referred to use on other parts of the racecourse were ruled out, together with those which Arena had given permission for, then the remainder of witnesses did not constitute a significant number of residents from a neighbourhood within a locality. He referred to Appendix C of the report and said that if similar names were grouped together as representing one household, the number of dwellings represented stood at 15. A further three

names had moved away during the relevant period, giving a net figure of 12 (or perhaps 13). As there were approximately 60 dwellings in Stone Street, this represented some 21% of the community. He added that 50% of the entries were by dog walkers who had the opportunity of using a public footpath, but evidently preferred the car park.

(34) Mr Longstaff-Tyrell turned to the question of whether use had been contentious. He said that Folkestone Racecourse employees had over the years told local people on all parts of the racecourse to leave. He added that some of the respondents to the applicant's questionnaires referred to being challenged by the Racecourse. One witness had written "*saw a resident of Westenhanger being stopped and verbally challenged when he was jogging in the green area in, I believe, 2009*", and another had written "*I was yelled at (from a distance) in 2008*". A third witness had written "*a man in a range rover informed me that Arena Leisure did not carry public liability insurance if I injured myself*". It was therefore clear from the applicant's own evidence that informal use of the site had been challenged and contested by Arena, and therefore such use could not be considered "as of right".

(35) Mr Longstaff-Tyrell said that the application site had been without a formal fenced enclosure, both for the convenience of the racecourse residents and in order to retain the open nature of the landscape. Access to Westenhanger Castle and Farm Cottages could not be restricted. The gates fronting Stone Street had been erected in 2007, partially in order to welcome racegoers to Folkestone Racecourse but, equally, so that the site could be securely closed down if required.

(36) Mr Longstaff-Tyrell said that there was a public footpath which passed through the racecourse and Westenhanger Castle. At the start of the footpath adjoining Stone Street there were two signs stating that there should be no dogs on the racecourse. These signs had been there for a considerable time. Taking account of the now redundant corporate colours and the condition of the signs, he was of the opinion that they had been erected in the late 1990s. They were still quite legible and in a prominent position. They had simply been ignored.

(37) Mr Longstaff-Tyrell added that from about 2007 to the present time, signs had been put up on the Stone Street gates specifically aimed at dog walking, because it had become a problem.

(38) Mr Longstaff-Tyrell concluded his presentation by saying that Arena did not believe that the applicant had established on the balance of probabilities that each element necessary to satisfy the tests for registration of land as a village green had been satisfied. None of the criteria had been properly and strictly proved. Although Arena did not accept the report's conclusion that village green use had been established, it agreed that the applicant's failure to submit the application within the correct period was a "knock out blow". Arena therefore requested that the Panel should refuse the application because the applicant had not proved all of the criteria necessary to establish the existence of a village green and because, in any event, the application had been submitted out of time.

(39) The Chairman advised that the evidence from the former manager of Folkestone Racecourse was inadmissible as it had not been signed.

(40) Mr M Woolford (a local resident) said that he could not recall when the signs had gone up. However, they referred to dogs not being permitted on the racecourse and he had understood this to mean the actual track itself.

(41) Mr Longstaff-Tyrell said that “the racecourse” meant the entire area owned by Folkestone Racecourse, including the application site.

(42) The Commons Registration Officer agreed with Mr Longstaff-Tyrell that the user evidence forms indicated that the witnesses also understood that the prohibition on dog walking referred to the entire area.

(43) Mr Bultitude asked what the Commons Act had to say about publicity for a prohibition on recreational use. The report indicated that the December 2009 Parish newsletter had the force of Law. He considered that something more was that required and that there were legal precedents which suggested that notices were needed to establish the fact.

(44) The Commons Registration Officer replied to Mr Bultitude by saying that the “as of right” test consisted of three elements. These were that use had to be without force, stealth or permission. Use by force did not necessarily have to be physical force. If the landowner had done enough to clarify to the public that informal use was contentious, it was considered that such use was by force. Rights could only be acquired if the landowner did nothing to assert his right to prevent it. Case Law had established that there was no requirement to put up notices to prevent use by force and use could become contentious by other means. Notices were only necessary if the landowner wished to indicate that use was with permission, and that this permission could be revoked.

(45) The Chairman asked whether there had been a special car parking charge to get into the application site on race days. Mr Longstaff-Tyrell replied that parking had been free for race patrons. The entry fee had been for the entire racecourse, regardless of whether they brought their cars onto the site.

(46) Mr Plumstead said that he had personally taken part in an afternoon-long formal cricket match on the site during the period in question. Mr Longstaff-Tyrell replied that this must have been in 1987 when the pitch had been cut by the landowner’s groundsman. This use would have been with permission.

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

(48) RESOLVED that the applicant be informed that the application to register land at Folkestone Racecourse in the parish of Stanford has not been accepted.

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REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 17 December 2013.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr M Baldock, Mr C W Caller and Mrs V J Dagger

ALSO PRESENT: Mr D Baker

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

UNRESTRICTED ITEMS

21. Application to register land at Cockreed Lane in New Romney as a new Town or Village Green (Item 3)

(1) The Commons Registration Officer tabled some aerial photographs of the application site, taken in 1990 and in 2005/06. She also tabled some street view images taken in 2009 prior to the land being fenced off.

(2) The Commons Registration Officer began her presentation by saying that the application had been made by Mrs A Jeffery under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. It had been considered by a Regulation Committee Member Panel on 19 February 2013. This Panel had accepted a recommendation to refer the matter to a Public Inquiry for more detailed consideration.

(3) The Commons Registration Officer informed the Panel that the Public Inquiry had been held over 5 days in mid July 2013 and that the Inspector had produced his findings on 30 August 2013. These had reached conclusions on the legal tests, which the Commons Registration Officer proceeded to summarise.

(4) The first test was whether use of the land had been “as of right”. The Inspector had concluded that use had certainly not taken place in a secretive manner. He had then considered whether use had been by force. Whilst there had been no physical force, there remained the question of whether use had taken place in defiance of a challenge by the landowner (either verbally or through the erection of prohibitory signage. The Inspector had accepted that the landowner had indeed put up signs in 1992 and in 2000. He did not, though, consider that these notices were sufficient to render use forcible. This was because they had only been standing for a period of between one day and two weeks at a time, and all the applicant’s witnesses had confirmed that they had not seen them. As a consequence, the landowner could not be said to have undertaken sufficient action to inform the public at large that use was being challenged.

(5) The Inspector had also considered the question of whether use had been by permission. He had concluded that, whilst the landowner had granted permission for some uses such as dog walking and football, there was still a sufficient volume of evidence to indicate that he had not done so for the majority of users. For this reason, the Inspector had advised that use had not been by permission.

(6) The Commons Registration Officer then said that the Inspector had also looked at the question of whether use had been “by right” as a consequence of being in respect of the Public Footpath. In his professional view, the descriptions in this case of activities such as dog walking and children playing were associated with the Public Footpath and therefore needed to be discounted when assessing whether use of the application site had been “as of right.”

(7) The Inspector had then considered whether use of the land had been for the purposes of lawful sports and pastimes. He had been satisfied that the such activities had taken place, citing evidence of dog walking, horse-riding, cycling, children’s play and kite flying. He had, however, concluded that many of these activities had involved “linear use” associated with the Public Footpath. He had concluded that, once such use was discounted, the body of qualifying use had not demonstrated the requisite degree of intensity to give rise to a right of recreation.

(8) The next test was whether use had been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality. The Inspector had considered the applicant’s claim that the neighbourhood was the area north and northwest of the High Street in New Romney within the locality of the Town Ward of new Romney Town Council. He had found that the neighbourhood described did not possess the sufficient degree of cohesiveness to qualify as such and meet the requirement of the Commons Act 2006. He had noted that none of the landowner’s witnesses had recognised the neighbourhood as comprising an area distinct from the rest of new Romney. Furthermore, many of the applicant’s witnesses had been unable to agree with the definition put forward.

(9) Having dismissed the applicant’s defined neighbourhood, the Inspector had found it unnecessary to expressly consider whether a significant number of residents had used the land in question. The Commons Registration Officer said that the Inspector’s conclusions, made elsewhere in his report, demonstrated that he had been satisfied that the use had not been sufficient to give rise to a general right to recreate across the whole of the land.

(10) The Commons Registration Officer briefly confirmed that the Inspector had accepted that the application had been made in October 2011 which was within the two year period of grace specified in the Act. He had then found that the land had not been used in the requisite manner throughout the relevant 20 year period because the it had been cropped in 1989/90, 1990/91 and 1991/92. Almost all the applicant’s witnesses had confirmed that they would avoid the land at these times, other than for the purposes of walking along the Public Footpath or following other linear routes around the perimeter.

(11) The Commons Registration Officer then quoted the Inspector’s overall conclusions in favour of his recommendation that the application should be rejected. He had stated:

"I conclude that the Applicant has failed to demonstrate: (i) that the Land was used with sufficient intensity during the Relevant Period; (ii) that use of the Land was undertaken by the inhabitants of a qualifying neighbourhood which possessed the necessary degree of cohesiveness for the purposes of the 2006 Act; and (iii) that the Land was not (sic) used as a town or village green during the period 1989 – 1992, at which time it was in intensive agricultural use".

(12) The Commons Registration Officer informed the Panel that she had sent the Inspector's report to the applicant and objectors. The latter had not commented on the findings. The applicant had highlighted a number of issues and urged the County Council not to accept the Inspector's conclusions. She had pointed out that none of the users of the land had seen any prohibitive notices, that the Inspector had considered some of the objector's witnesses' evidence to be overstated, that the majority of the use had not been permissive, and that the requisite activities had taken place on the land. The applicant had also said that she did not accept the Inspector's conclusions that the Public Footpath had been heavily used and had asserted that some witnesses had in fact made reference to using the land when crops were being grown.

(13) The Commons Registration Officer concluded her presentation by saying that, having carefully considered the Inspector's report and the applicant's response to it, she considered that the legal tests in relation to the registration of the land as a new Village Green had not been met. She therefore recommended accordingly.

(14) Mr Caller asked whether the planting of crops always constituted a challenge to right of use. The Commons Registration Officer replied that such activity was not normally an overt challenge, but would of course have an impact upon recreational use of the land. The test was whether it would appear to a member of the public that the landowner did not believe that there was a right to recreate on the land.

(15) Mr Baldock referred to the Inspector's comments on page 6 of the report where he had quoted the *DPP v. Jones 1999* case in support of his opinion that the activities he had cited constituted rights of way type use rather than "as of right" use. He said that dog walkers would often let their dogs off the lead and allow them to roam over the entire area. The Commons Registration Officer replied that for the purposes of determining Village Green applications, the significant factor was how this would appear to the landowner. There had been a lot of very detailed cross examination during the Public Inquiry. The outcome had been that the Inspector had concluded that the landowner would have considered the activities to be related to the Public Footpath rather than as an assertion of a right to recreate.

(16) Mr M Skilbeck addressed the Panel on behalf of the applicant. He introduced himself as a retired solicitor and thanked the Chairman for agreeing to a postponement from the previously set date for the meeting. He added that Mrs Jefferey had unfortunately had another appointment that she had been unable to postpone.

(17) Mr Skilbeck then noted that the Inspector's conclusions (*quoted in 11 above*) seemed to suggest that the applicant had been unable to show that the land was not used as a town or village green in 1989 to 1992. The Commons Registration explained that this was clearly a grammatical error as the text of the report clearly

indicated that the Inspector believed that the applicant had not shown that the land had been so used.

(18) Mr Skilbeck asked for Mrs Jefferey's letter of 10 October 2013 to be tabled. A copy of this letter was thereupon given to all Members of the Panel and others present.

(19) Mr Skilbeck drew attention to the fact that none of the 15 applicant's witnesses who had given evidence at the Public Inquiry and 32 people who had completed user evidence forms had testified to having seen the signs. Two other witnesses had seen signs, but these had simply been warnings of dogs worrying sheep. He said it was inconceivable that 47 people in total could have failed to see such signs if they had been put up.

(20) Mr Skilbeck then referred to the Inspector's comments that some of the objector's witnesses had given overstated evidence. He pointed to one reference in the Inspector's report to one such witness being "*of limited assistance*". He also noted that another witness must have had credibility issues because she had stated that the ditch went around the boundary of Rolfe Lane even though there was vegetation protecting that boundary.

(21) Mr Skilbeck went on to draw attention to the Inspector's findings that the requisite types of activity had been carried out on the land and that the majority of the use had not been permissive.

(22) Mr Skilbeck said that, for the purposes of establishing a neighbourhood within a locality, the Inspector should have relied on the Local Development Framework Core Strategy which described the whole land as "North-West of New Romney." Furthermore, the Inspector had not referred in his report to two witnesses who had confirmed that, in their view, the neighbourhood existed as claimed.

(23) The Commons Registration Officer replied that a neighbourhood needed to be a cohesive entity capable of definition. The Inspector had taken the view that as local people could not agree that a neighbourhood existed, a geographical description of the area set out in a planning document was irrelevant.

(24) Mr Baldock asked whether people responding to an Inspector's question was a conclusive way of defining whether a neighbourhood existed. He considered that it was quite possible that different people could describe a neighbourhood in a different way when asked, but that this did not necessarily mean that a neighbourhood could not be defined. The Commons Registration Officer replied that this was a question of fact and degree. On occasions (such as at High Brooms in Tunbridge Wells) all parties accepted the neighbourhood proposed. It was not necessary for all parties to agree completely and precisely. On this occasion, however, there had been very little agreement at all. Even amongst the applicant's own witnesses.

(25) Mr Skilbeck asked the Panel to note that the Inspector had accepted (despite his conclusions on linear use) that 2 witnesses had walked on the land when the crops were growing on it.

(26) The Commons Registration commented on the general question of the reliability of witnesses by saying that the Inspectors had a great deal of experience in

establishing the facts through skilled questioning. This enabled them to discount evidence that was either over-zealous or mistaken.

(27) Mr D Kavanagh (Projects Manager – E&A Strategic Land) addressed the Panel on behalf of the landowner. He said that he had attended the Public Inquiry and read the Inspector's report and the witness statements. The Inspector had concluded that the application should fail, and nothing the applicant had written since, in any way suggested that his conclusions needed to be revised. He asked the Panel to support the Inspector's recommendations and bring to an end to what he considered had been a long and vexatious process.

(28) Mr D Baker (Local Member) said that he had lived and worked in Romney Marsh for 6 years. People in Romney Marsh considered that they lived in one area regardless of which part of it they happened to inhabit. He referred to the Inspector's view that some of the landowner's evidence had been overstated and asked the Panel to notice that one witness had stated that he had been able to see through the foliage whilst driving. This was clearly an example of such overstatement. Whilst he had concerns about some of the statements that had been made, he nevertheless considered that the Inspector's recommendations were correct.

(29) Mr C W Caller moved, seconded by Mr S C Manion that the recommendations of the Head of Regulatory Services be agreed,

Carried 4 votes to 0 with 1 abstention.

(30) RESOLVED that for the reasons set out in the Inspector's report dated 30 August 2013, the applicant be informed that the application to register land at Cockreed Lane in New Romney has not been accepted.

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By: Head of Democratic Services
To: Regulation Committee – 28 January 2014
Subject: Home to School Transport Appeals update
Classification: Unrestricted

Summary: To provide Members with an overview on Home to School Transport appeal statistics for the period between 1 January 2013 to 31 December 2013 and a brief comparison with transport appeals statistics in 2012.

1. Home to School Transport Appeal Statistics 2013

(1.1) For the period between 1 January 2013 to 31 December 2013 a total of 109 individual appeals were considered by Member Transport Appeal Panels of this Committee. 30 % were upheld at least in part (e.g time limited assistance). A breakdown of these appeals on a month by month basis is set out in Appendix 1 along with a comparison with appeals held in 2010 to 2012.

(2.2) January 2014 14 appeals have been arranged.

2. Transport Appeal Statistics – 2012

(2.1) For the period between 1 January 2012 to 31 December 2012 a total of 106 appeals were considered by Transport Appeal Panels. 24% were upheld at least in part (e.g. time-limited assistance).

(2.2) It is interesting to note that in 2013 57 of the total number appeals were heard between 1 September – 31 December 2013.

3. Transport Eligibility for Children with Statements of Special Educational Needs

(3.1) As from 1 January, transport for SEN children will be assessed by Transport Officers within Fair Access. They will be responsible for preparing and presenting appeals where transport has been refused. A SEN officer will accompany them to appeals to provide Members with information on the child's needs if requested.

4. Recommendation Members are asked to note this report.

Andy Ballard
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TABLE 1
HOME TO SCHOOL
TRANSPORT APPEALS -1 JANUARY – 31 December 2013

Month	Upheld	Not Upheld	Total	% Upheld
January	1	13	14	7%
February	4	4	8	50%
March	2	4	6	33%
April	0	5	5	0
May	0	0	0	0
June	4	4	8	50%
July	0	3	3	0
August	2	6	8	25%
September	3	9	12	25%
October	6	16	22	27%
November	7	5	12	58%
December	4	7	11	36%
TOTALS	33	76	109	30%

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 from the Commons Registration Team

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee on Tuesday 28th January 2014.

Recommendation:

I recommend that Members consider the report and note its contents.

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 nine Regulation Committee Member Panel meetings and a total of nineteen Village Green applications have been considered; this makes 2013 the busiest year so far for determining Village Green applications made under section 15 of the Commons Act 2006. Of the nineteen applications considered last year, 5 were referred to Public Inquiry, 9 were registered as new Village Greens and 5 applications were rejected or otherwise not progressed.
3. At the Regulation Committee Member Panel meeting on 26th November 2013, Members resolved to defer a decision in respect of the Kingsmead Field at Canterbury application until the Supreme Court's judgement in the *Barkas v North Yorkshire County Council* case has been issued; the case is due to be heard on 2nd April 2014 and a decision is due in the summer. The Downs at Herne Bay application involves similar legal issues and this matter is also on hold pending the outcome of the *Barkas* case. It is currently anticipated that both of these cases will be referred to a Member Panel for decision in the autumn.
4. Also over the last twelve months, six Public Inquiries have been arranged at a range of locations around the county. We are awaiting the Inspectors' reports for four of those cases (due imminently) and these cases will be referred to a Regulation Committee Member Panel for a final decision over the next few months. This year, there will also be Public Inquiries into applications at Canterbury (adjourned from last year, details to be confirmed), Goudhurst (w/c 2nd June 2014) and Ripple (details to be confirmed).
5. There are currently 14 applications awaiting determination by the County Council, all but one of which are currently under investigation.

Pioneer implementation of Part 1 of the Commons Act 2006

6. As Members will be aware, in addition to dealing with the Village Green applications referred to above, the County Council is also involved with the pioneer implementation of Part 1 of the Commons Act 2006 ("the 2006 Act"). The 2006 Act was designed to replace and improve what had become restrictive and much out-dated provisions contained within the Commons Registration Act 1965; in particular, it provided for the Registers to be amended to reflect changes and for mistakes to be corrected.

7. In order to enable Ministers to be kept informed of any unforeseen costs and identify any problems associated with the new legislation, DEFRA decided that the legislation would initially be available only a select number of authorities. Kent County Council was one of seven Commons Registration Authorities that were invited to participate in a 'pioneer implementation' of the legislation, and the new provisions were brought into force in the 'pioneer implementation areas' from 1st October 2008.
8. During this time, the new provisions have been used to update and modernise the Registers of Common Land and Village Greens, and Officers have been working closely with DEFRA to assist with improving the legislation and associated Regulations.
9. Until recently, it has not been clear if (or how) this legislation would be rolled out nationally. However, a ministerial statement made on 9th January 2014 has now confirmed that the Government is committed to proceeding with a national implementation of this legislation, albeit in a staged format. A full copy of this statement is attached at **Appendix B**.
10. Part 1 of the Commons Act 2006 will be commenced in full in Cumbria and North Yorkshire (which have the largest areas of Common Land in the country) as from 1st October 2014; from that date, these authorities will have the same powers available to them as Kent and the other existing 'pioneer authorities'.
11. The Government has decided not to fully implement the Commons Act 2006 provisions more widely at this stage, and is unlikely to do so until at least the next Parliament. However, in recognition of the very limited powers currently available to non-pioneer authorities (in keeping their Registers of Common Land and Village Green up-to-date), there will be partial implementation of a limited number of provisions. This means that, from 1st October 2014, section 19(2)(a) of the Commons Act 2006 (which enables the correction of certain mistakes in the Registers) will be commenced throughout England, as will paragraphs 6 to 9 of Schedule 2 of the Commons Act 2006 (which allows for the de-registration of land that was wrongly registered as Common Land or Village Green).

Recommendation

12. I RECOMMEND Members consider the report and note its contents.

Background documents:

Appendix A – Schedule of Village Green applications

Appendix B – Ministerial statement regarding Part 1 of the Commons Act 2006

Contact Officer:

Melanie McNeir

Public Rights of Way and Commons Registration Officer

PROW and Access Service

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APPENDIX A:
Schedule of Village Green applications

**Applications resolved by the Regulation Committee (Member Panel)
since last report (18th May 2013)**

Description	Parish	Member(s)	Outcome
Land at Cockreed Lane	New Romney	Mr. D. Baker	Rejected
Folkestone Racecourse	Stanford	Ms. S. Carey	Rejected
Riverside Close	Kingsnorth	Mr. M. Angell	Accepted and registered as Village Green
Land at Showfields	Tunbridge Wells	Mr. J. Scholes	Accepted and registered as Village Green
Land at South View Road	Tunbridge Wells	Mr. P. Oakford	Accepted and registered as Village Green
Land at Grasmere Road	Ashford	Mr. J. Wedgbury	Accepted and registered as Village Green

Forthcoming Public Inquiries

Description	Parish	Member(s)	Details
Chaucer Field (at the University of Kent campus)	Canterbury	Mr. G. Gibbens	Awaiting Inspector's report re: preliminary issue
The Glebe Field	Goudhurst	Mr. A. King	Commences Monday 2 nd June 2014, venue TBC
Land at Coldblow Woods	Ripple	Mr. S. Manion	Details TBC

Outstanding applications to be resolved

Description	Parish	Member(s)	Status
The Downs	Herne Bay	Mr. N. Bond Mr. B. MacDowall	On hold*
Seaton Meadow	Wickhambreaux	Mr. M. Northey	Inspector's report received, refer to Panel for decision
Land known as Fisherman's Beach	Hythe	Mr. M. Whybrow	Awaiting Inspector's report following Public Inquiry
The Cricket Field	Marden	Mrs. P. Stockell	Awaiting Inspector's report following Public Inquiry
Land at Ursuline Drive	Westgate	Mr. J. Elenor	Awaiting Inspector's report following Public Inquiry
Kingsmead Recreation Ground	Canterbury	Mr. G. Gibbens	On hold*
Land at Montefiore Woodland	Ramsgate	Mr. A. Terry Ms. Z. Wiltshire	Refer to Panel for decision
Land at The List	Littlebourne	Mr. M. Northey	Under investigation
Land at Masefield Way	Tonbridge	Mr. R. Long Mr. C. Smith	Under investigation
Land at The Warren	Brabourne	Mr. A. Wickham	Under investigation
Whitstable Beach	Whitstable	Mr. M. Harrison Mr. M. Dance	Awaiting investigation

*At the Regulation Committee Member Panel meeting on 26th November 2013, Members resolved to defer a decision in respect of the Kingsmead Field application until the Supreme Court's judgement in the *Barkas* case has been issued (the case is due to be heard on 2nd April and a decision is due in the summer). The Downs application involves similar legal issues and this matter is also on hold pending the outcome of the *Barkas* case.

Commons Act 2006
Statement

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley) (Con):

My Hon Friend the Parliamentary Under Secretary of State (Dan Rogerson) has today made the following statement.

I am pleased to announce the next stage in the implementation of Part 1 of the Commons Act 2006, under which the registers of both common land and town and village greens can be amended.

Part 1 will be fully implemented in the counties of Cumbria and North Yorkshire. These counties have been chosen because they have the highest hectarage of common land and are amongst the most agriculturally active counties in England, in terms of commoning.

Many properties were wrongly registered when the registers were compiled in the late 1960s under the Commons Registration Act 1965 and Commons Registration Authorities have not had the power to amend them. The result is that those properties have been adversely affected for over 40 years. This has had a knock-on effect on the owners' ability to sell those properties. I wish to enable this situation to be resolved so I intend to implement section 19(2)(a) and paragraphs 6-9 of Schedule 2 to the Act throughout England.

Section 19(2)(a) allows for the correction of mistakes made by Commons Registration Authorities when recording entries in the registers. Paragraphs 6-9 of Schedule 2 allow for the de-registration of land that was wrongly registered as common land or town or village green.

The question of further implementation of Part 1 in England will be considered again as soon as resources permit, which I expect to be within the life of the next Parliament at the earliest.

Update on Planning Enforcement Issues

Item 7

Report by Head of Planning Applications Group to the Regulation Committee on 28th January 2014.

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 planning enforcement and monitoring work carried out by the Planning Applications Group since 3rd September 2013 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1, 2 and 3). They cover alleged 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. Cases resolved or sufficiently progressed to be removed from our immediate workload, are highlighted in bold.

Report Format

3. The report follows its established format, equipping Members with the essential facts of a series of cases, varying in their degree of complexity and challenge. Summary schedules are attached, with the following sub-divisions:
 - 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

Surge in Cases

5. Since the last Meeting there has been a marked surge in serious planning enforcement cases. The number and severity are reflected in the number and content of the confidential reports that have been required this time. I have pre-briefed the Chairman on this new business pressure.
6. The reasons behind this sudden influx in cases are difficult to adduce but it appears that it reflects (in an allegedly contravening way) the growing upturn in the economy. Any

new development would usually involve the generation of surplus spoil. A percentage of that may in turn be dispensed of in an unauthorised way through the contract chain (so avoiding landfill tax and general regulation). It is the increase in the number of occasions that this seems to be occurring and the quantities involved, which appears to indirectly highlight the economic resurgence.

Update to Enforcement Protocol

7. These new cases have been attended to as a matter of urgency and in line with our Enforcement Protocol commitments. That in turn has required updating to reflect the new legislative planning framework introduced by the Coalition Government. The opportunity has also been taken to update all contact details, so that the document is as useable and relevant as it can be. No other substantive changes have been made. A copy of the 2014 document is contained at **Appendix 4**. On Members endorsement, the document will be able to replace the current version on the County Council's website.

Co-ordinating and Advisory Role

8. Alongside the Group's main workload, I am also continuing to offer advice on a number of district enforcement cases. County Officers have been adopting for some time a supportive role, acting in a co-ordinating capacity and forging links between the relevant local planning authority, the Environment Agency and increasingly of late the Kent Police Rural Liaison Team.
9. The Larkey Wood, Chartham case (Schedule 1, No.1); Nt Rix Scaffolding Ltd, Dover (Schedule 1, No.4) and Foxdene, Stockbury (Schedule 1, No.6) are representative examples. Jurisdiction is often an issue given the division of planning responsibilities between County and District Planning Authorities and the complexity of some of the alleged unauthorised activities. A guiding principle however, as reflected on page 1 of our Enforcement Protocol with the districts (as made available to Members at this Meeting) and also later case law, is that mixed-use sites fall to the respective District Council to deal with; even those involving some waste element, which of itself would usually be for the County Council to handle. In these sorts of cases we freely offer technical and procedural advice to our district colleagues in order to help them with this work and in the overall interests of the public, local amenity and the environment.

Pooling of Resources and Expertise

10. This pooling of resources and expertise is becoming a very necessary feature of modern planning and related enforcement. For one thing, it helps to compensate for substantial staff reductions in the various organisations. The Environment Agency for instance is currently facing a national reduction of 1700 staff. The recent debate around the potential impact of this upon flood protection work, could lead as a consequence, to further contraction of the EA's waste enforcement capability. These proposed changes will need to be carefully watched.
11. Internally, new and pragmatic links have also been forged between the Planning Enforcement team (upholding the Internal Enforcement Protocol) and the KCC Gypsy & Travellers Unit. Waste management enforcement at Greenbridge Park, Canterbury

(Schedule 3, No. 1) and Barnfield Park, Sevenoaks (Schedule 3, No. 2) give details of the approach taken.

Case focus

12. Since the last Meeting resources have been focussed on 5 sites where formal enforcement action has been taken, 5 cases where investigations are underway and a further 7 cases that have been satisfactorily progressed.

Achievements / Successes [including measurable progress on sites]

13. Red Lion Wharf, Northfleet (Schedule 2, No. 4), is now restored. All stockpiles of waste wood have been shredded and removed off-site for beneficial use elsewhere within the wider company structure of the operators. The site is now available for re-development.
14. Long awaited and retrospective planning applications have also been received from Lance Box Ltd (Schedule 1, No. 3); Units 6,13 & 14 Detling Airfield (Schedule 1, No. 5) and (with qualifications) from Sheerness Recycling Ltd, Sheerness (Schedule 1, No. 9).
15. Further positives are that Cube Metal Recycling (Schedule 1, No. 8) and CLC Construction Ltd, Westedene (Schedule 2, No. 7) have been granted planning permission, offering enforceable conditions on their respective site activities. Planning permission by Sevenoaks DC for a 9 hole golf course extension, incorporating the Brasted Sandpits restoration requirements (Schedule 2, No. 5) is also welcome.

New Cases, especially those requiring action / Member support

16. Seven new County Matter cases have arisen since the last Meeting. They include: Nt Rix Scaffolding Ltd, Dover (Schedule 1, No.4); Orchard Place, Maidstone (Schedule 1, No.7); Wyecycle, Hinxhill (Schedule 2, No.1); FM Conway Ltd (Schedule 2, No.3); Sheerness Recycling, Tonbridge (Schedule 2, No.6); Greenbridge Park Gypsy & Travellers site, Canterbury (Schedule 3, No.1) and Barnfield Park, Gypsy & Travellers site, Sevenoaks (Schedule 3, No.2).

Significant on-going cases

17. The most significant cases at the moment are the Larkey Wood, Chartham case (Schedule 1, No.1 and Exempt Item 10) and related site at Thirwell Farm, Hernehill (Schedule 1, No.11 and Exempt Item 11). These alleged unauthorised activities have attracted the close and co-ordinated attention of four regulators and their respective sub-teams. I would refer Members to the references given above for an expanded briefing on both cases.
18. Given that the repossession of both sites is a distinct possibility and we may soon be negotiating with new landowners, it is timely for the County Council to reassert in the case of Larkey Wood, the full restoration requirements of our Enforcement Notice on the land. Similarly, full restoration of Thirwell Farm is again required. These objectives are

written into the respective Schedule entries for Members endorsement.

Other cases / issues of interest and requests from Members

19. A site which I should like to bring to Members attention is Foxdene, Rumstead Lane, Stockbury (Schedule 1, No.6). This alleged unauthorised activity concerns a mixed skip hire, storage and waste transfer use within the countryside. The operators exercised their right in early 2012 to apply to Maidstone BC (MBC) for lawful use status. They also sought the retention of their revised access arrangements and security bund. The applications have still to be determined. Surprisingly, rather than proceed to a decision on either application after nearly two years, MBC have made very recent attempts to pass the lawful use application to the County Council for us to process and by implication also to resolve the related enforcement case. No mention has been made of the linked access / bunding application.
20. I have researched the case and met with the relevant MBC officers. My conclusion is that the case is properly a district matter, should be retained by them and determined expeditiously. The case involves a mixed-use activity, which Kent Districts have previously agreed under our Enforcement protocol to deal with. That remains the position and indeed has been reinforced by subsequent case law. On this basis, the County Council is not the determining authority (for either application) and is therefore unable to accede to the Borough Council's request.
21. I intend to reply to MBC, stating that they should exercise their statutory duty and determine this mixed-use case. I shall also make it clear that the County Council is unable to substitute for them.
22. Notwithstanding the apparent misunderstanding over jurisdiction by MBC, I have still analysed the case and provided quite extensive and specialist advice to the relevant officers. That has included a range of enforcement options, drawing upon years of experience in similar cases across the County and the advice of specialist Counsel.
23. The Schedule entry (see 19 above) seeks Members support for this approach, including a firm stance on jurisdiction.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

24. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits to formally monitor them. Since the last Regulation Committee, we have made a further 27 chargeable monitoring visits to mineral and waste sites, yielding a related income to the Group.

Resolved or mainly resolved cases requiring monitoring

25. 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.
26. Cases are periodically removed (with Members agreement) to make way for others when the situation on site has been stabilised; 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. Among the examples this time are those listed within the Achievements / Success section between paragraphs 13 to 15 of this report.

Conclusion

27. The notable feature of this particular report is the marked surge in serious planning enforcement cases since the last Meeting. These are principally covered within a series of confidential items elsewhere within these papers. The challenge has been met with sustained and urgent work. Of further note is the County Council's Planning Enforcement Protocol, which in its latest version reflects up-to-date contact details and any related policy changes. Within the Protocol is guidance covering issues of jurisdiction between the County Council and the Kent Districts. Supporting this position is a commitment by our Planning Enforcement Team, to advise and assist our counterparts in the districts and also in the Environment Agency, on cases where our interests intersect. Pooling such expertise and resources is becoming increasingly important given the contraction of many of the authorities and agencies that we interact with.

Recommendation

28. I RECOMMEND that MEMBERS NOTE & ENDORSE:

- (i) the actions taken or contemplated on the respective cases set out in paragraphs 5 to 26 above and those contained within Schedules / Appendices 1, 2 and 3.
- (ii) the minor revisions to the County Council's Planning Enforcement Protocol, pursuant to paragraph 7 of this report.

Case Officer: Robin Gregory

01622 221067

Background Documents: see heading



Active Enforcement Cases

Schedule 1: Contraventions on (part) unauthorised sites

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	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p>Canterbury</p> <p>DC3/CA/03/COMP/OO53 Larkey Wood Farm, Chartham</p> <p>(Member: John Simmonds)</p>	Apparent unauthorised waste-related activities on site.	<p>This site is subject to a confirmed Enforcement Notice, prohibiting the importation, stockpiling and storage of waste materials and the presence of a soil-screener on site. 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>The site has been inspected by KCC, Canterbury City Council, the EA and Kent Police, in a single investigating action.</p> <p>Regrettably, there are new alleged breaches on site, including (but not exhaustively): the stockpiling of waste wood, soils, hardcore and miscellaneous retail / factory clearance items & mobile accommodation units for salvage.</p>	<p>Having been allegedly further breached, the restoration requirements of the Enforcement Notice may now be revisited.</p> <p>Full restoration is required and I would seek Members support for this principled stance.</p> <p>The case is subject to an Exempt Report as Item 10 of these papers.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
2	KCC/CA/0324/2013 Wilson Skips, Wealden Forest Park, Herne Common (Member: Alan Marsh)	Apparent unauthorised waste storage and handling on site	To achieve planning compliance through negotiation, including encouragement and advice to re-locate to a more suitable site. Planning applications submitted in 2002 and 2004 for a similar waste management use were refused on the grounds that the activity was inappropriate at this location.	An application for a certificate of lawful use was received in October 2013. It was being claimed that over a period of ten years the site had been used continuously as a skip business and for related waste storage. However, on closer examination, it was clear that lawful use did not apply and under advice, the application was withdrawn.	No amenity complaints have been received regarding this site. The EA are also available to control the use. In the circumstances, I would seek Members support for enforcement action to be held in reserve , pending relocation of the use, which the operators are now actively pursuing. The site will be monitored on a regular basis, ready to be reviewed at subsequent Committee Meetings .
3	Dartford KCC/DA/0123/12 LanceBox Ltd Plot 14 Manor Way Business Park, Swanscombe (Member: Peter Harman)	Alleged receipt, storage and processing of construction & demolition waste, including wood waste.	Enforcement action has been held in reserve pending submission of a retrospective planning application. Trading has continued in the meanwhile under tight KCC / EA interim controls.	The long overdue and retrospective planning application has now been received.	I would seek Members continued support for the reserving of enforcement action (i.e. an Enforcement Notice / injunction), pending determination of the application, when the situation may be reviewed.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
4	<p>Dover</p> <p>KCC/DO/COMP/2013 Nt Rix Scaffolding Ltd, Astley Avenue, Dover</p> <p>(Members: Pam Brivio & Gordon Cowan)</p>	<p>Importation and depositing of substantial volumes of hardcore in the open countryside.</p> <p>The material has been traced to the new demolition arm of Nt Rix Scaffolding.</p>	<p>To exact compliance and planning control.</p> <p>Importation / intended crushing of the material are without permission. That would not be supported by officers both in principle and practice. The location is entirely inappropriate, for such a use, especially being adjacent to a KCC school sports field and local wildlife site.</p>	<p>A Planning Contravention Notice (PCN) has been served (requesting an explanation of the alleged breach and intended remedial measures).</p> <p>A round-table meeting has recently and successfully been held between the operator, his agent and officers from KCC, Dover DC and the EA.</p>	<p>The PCN has been returned, obviating any court action. I have also required full removal of the hardcore by the date of the Meeting. Should that be achieved, I would seek Members support for the reserving of enforcement action pending restoration of the damaged land.</p> <p>The case is subject to an Exempt Report as Item 14 of these papers.</p>
5	<p>Maidstone</p> <p>KCC/PRE/MA/0197/2013 Units 6, 13 & 14 Detling Airfield Industrial Estate Detling</p> <p>(Member: Jenny Whittle)</p>	<p>Periodic escalations in waste volumes on site and related alleged internal breaches of planning control. The latest episode resulted in an unauthorised extension to the permitted operating base.</p>	<p>To steer and secure an overall and more permanent planning solution to the site, avoiding recurring problems.</p> <p>Breach of Condition notices and a confirmed Enforcement Notice are to hand but a new operator has taken over the site and has already removed most of the surplus waste.</p>	<p>It is now proposed to consolidate the use of the extended site and to enclose the main waste activities, within properly orientated and appointed buildings.</p> <p>A planning application to that effect has now been received.</p>	<p>I view the current turn of events in a positive light. The alleged breaches are now largely under control. The application also displays a level of co-operation and intent to optimise such a use on the available site area. I shall remove from the Schedules but continue to monitor the site.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
6	KCC/MA/COMP/2013 Foxdene, Rumstead Lane, Stockbury (Member: Jenny Whittle)	Mixed skip hire, storage and waste transfer activity.	The operators are currently claiming lawful use status from Maidstone BC (MBC). This includes the seeking of permission for related site engineering works. Both applications were submitted in early 2012.	The applications are long overdue for determination but instead of deciding them, MBC are now suggesting that the case is one for the County Council. I have reported further under paragraphs 19 – 23 of the main cover report to these Schedules.	I have analysed the case and met with MBC to assist in its handling. A mixed use of this type falls to MBC to deal with, both in terms of our Enforcement Protocol with them and by case law. I would seek Members support for this stance. .
7	KCC/MA/COMP/2013 Orchard Place, Heniker Lane, Sutton Valance (Members: Jenny Whittle / Eric Hotson)	Unauthorised waste uses / movements of large goods vehicles associated with such a use.	To investigate and see if there is a clear and discrete County Council activity to pursue, in addition to Maidstone BC's (MBC) long-term handling of the case.	A site visit confirmed that there was no evidence present of unauthorised waste uses or movements of large goods vehicles associated with such a use. There was also no presence of any plant, vehicles and containers to support such an alleged waste use.	The site appears to operate on a commercial basis, where fresh produce is grown locally under cover and sold to members of the public from a farm shop located on site. Such a use would fall to MBC to regulate. In the absence from MBC, of any information or briefing to the contrary , I propose to remove the item from these Schedules, at least for the time being.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
8	<p>Shepway</p> <p>KCC/SH/0323/2012 [DC3/SH/12] Cube Metal Recycling Unit A Highfield Industrial Estate Folkestone (Member: Bob Neaves)</p>	<p>KCC were alerted to this site by Kent Police and the Environment Agency (EA).</p> <p>The activity includes the importation, sorting and processing of scrap metals, for later despatch.</p>	<p>To achieve planning compliance and supportive control through an EA Permit.</p>	<p>A retrospective planning application has now been permitted, subject to conditions.</p>	<p>I shall now remove from these Schedules. The site will be monitored under normal arrangements.</p>
9	<p>Swale</p> <p>KCC/SW/0136/12 Sheerness Recycling Ltd Unit 34 Klondyke Ind Est Queenborough (Member: Angela Harrison)</p>	<p>Importation of construction and demolition spoil, with mechanical processing.</p>	<p>To assert planning control, through the submission of a retrospective planning application.</p> <p>Given its industrial location, the absence of no apparent overriding objections and no complaints, the operation has been allowed to continue, pending receipt of a planning application.</p> <p>It was separately agreed that at the point of submission a related / invalid lawful use application would be returned to the operator.</p>	<p>The long awaited planning application has now been received. This was intended to regularise the current use but in fact covers no part of the site.</p> <p>This unusual set of circumstances leaves the current activity with no form (or prospect) of control. That cannot continue.</p> <p>The application itself will be considered on its own individual merits.</p>	<p>Logic dictates that the current activity would be surrendered in favour of any new permission nearby. Commitments will be sought to that effect through the application.</p> <p>Short of this, I would seek Members support for the serving of an Enforcement Notice and / or the seeking of an injunction(s), in the event of any reluctance to concede the current use (following permission) or to stop (after a refusal). I shall keep Members informed.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
10	SW/05/COMP/0016 Woodgers Wharf, Horsham Lane, Upchurch (Member: Mike Baldock)	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>In the absence of any credible alternatives, restoration talks have switched to active pursuit of an ‘on-site’ solution i.e. using the beams to help create a hard-surface platform, ready for a beneficial and marine related after-use.</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, subject to nature conservation interests being adequately safeguarded.</p>	<p>Probate issues concerning the deceased landowner have now been resolved. A contracting firm and project manager have been employed and size reduction tests on the concrete beams have been completed.</p> <p>A scheme to remove the large stockpile of lintels and incorporate the material into the land is being finalised.</p> <p>The necessary works are planned to start and be completed during spring / summer this year.</p> <p>I shall keep Members informed on progress on site.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
11	<p>DA3/SW/2013 Thirwell Farm, Drove Lane, Hernhill</p> <p>(Member: Andrew Bowles)</p>	<p>Unauthorised importation of land-raising materials to the site, causing damage to the land and to its landscape setting.</p> <p>More recent inputs of material have been made, with no apparent land-based justification.</p>	<p>Swale BC sanctioned the initial works as agricultural permitted development and still holds overall planning enforcement responsibility for the site. To their credit, they have a confirmed Enforcement Notice to use against any mobile residential use.</p> <p>The EA have a separate enforcement brief, liaising with both County / Borough Planning Authorities.</p>	<p>Importation has been brought to a halt by a combination of EA letters to all known tip companies using the site and Planning Contravention Notices by KCC to the same parties. Both sets of documents reminded those engaged in the activity that they were individually at risk of action as well as the landowning interests.</p>	<p>Members' support is sought, on a contingency basis for the taking of enforcement action (should that be required), to include the serving of an Enforcement Notice; underwritten as required, by a County / High Court Injunction(s).</p> <p>The case is subject to an Exempt Report as Item 11 of these papers.</p>
12	<p>Tunbridge Wells</p> <p>Top Bungalow, Frieszley Lane, Cranbrook.</p> <p>(Member: Seán Holden)</p>	<p>Importation of builders' demolition spoil and alleged burying and burning on site, with associated heavy machinery noise.</p>	<p>To co-ordinate with the established efforts of Tunbridge Wells BC's Planning Enforcement and Environmental Health teams and the Environment Agency.</p>	<p>The case has been investigated by linked authorities.</p> <p>There is a mix of planning uses on site which leaves the case with the Borough Council.</p>	<p>Whilst not holding the key planning remit. I shall continue to advise and liaise with those that do.</p> <p>I shall otherwise remove the case from these Schedules.</p>

Schedule 2: Alleged breaches on Permitted Minerals & Waste Sites

Appendix 2

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	Wyecycle (Former Nacolts Brickworks, Nacolts Farm, Hinckley (Member: Andrew Wickham)	Operating on an extended site base and in the absence of full control.	To monitor the site and pursue compliance, as required. The site has been jointly monitored with the Environment Agency.	The original and permitted use (with core lawful elements) is closely reflected within the current activity and layout. A few stray skips need to be brought back into the yard but apart from that the footprint of the use has been respected.	This small recycling use is due to vacate the site within the next 12 months, in favour of potential housing development. Any site irregularities are capable of being dealt with under normal monitoring arrangements and liaison with the EA. I therefore propose to remove from these Schedules .
2	Dartford DA3/DA/1993 A Winchester & Sons Waste Recycling Centre Little Queen Street Dartford. (Member: Tom Maddison).	Complaints from local residents of amenity impacts by virtue of noise and dust arising from existing site operations.	To seek the best formula of management control among the various regulators. The site operates under an Established Use Certificate, with complex roots. This means that the EA has the more complete and direct set of powers, to address any issues on site.	The EA has reviewed site activities against the terms of the Environmental Permit. They have also monitored air quality using specialist equipment and sought any required adjustments on site.	I shall do what I can in the meanwhile to encourage relocation of the use to a more suitable site. I should stress however, that the ultimate decision on that lies with the operator. I propose for present purposes to remove from these Schedules

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	KCC/DA/COMP/2013 FM Conway Ltd, Rochester Way, Dartford (Member: Jan Ozog)	Excessive storage of materials on site in breach of the planning height condition and well above the acoustic screen, designed to protect the amenity of local residents.	Advise the operators and require immediate and progressive reduction in stockpile heights.	The operators have responded, reducing the level of material and confirming by photograph.	An alleged breach of this type should not occur on a site of this size and stature. However, I am prepared to treat this as a 'one-off' occasion, particularly given the operator's urgency in correcting the situation.
4	Gravesham DC3/GR/COMP/0013 Red Lion Wharf, Crete Hall Road, Northfleet (Members: Sue Howes & Narinderjit Thandi)	Importation of waste wood, stockpiling and shredding.	To cease importation and secure removal of the high residual stockpile of waste wood.	A three year temporary permission (with a S106 Agreement) has secured complete processing of all waste wood on site and also now its complete removal. .	The site is now vacant and ready for re-development. I therefore intend to remove from these schedules .
5	Sevenoaks DC3/SE/03/COMP/0071 Brasted Sandpits, Sevenoaks (Member: Richard Parry)	Breach of the planning permission to extract sand from this site in the MGB, AONB and SLA	To secure early restoration of the site within the scope of the materials already on site.	Following intervention by the EA on the waste tipped at the site, a recovery scheme of restoration was imposed on the company / landowners. They in turn sold the site to the neighbouring golf club.	After several attempts, planning permission has eventually been granted by Sevenoaks DC for a 9 hole golf course extension. This incorporates the required site restoration and I shall therefore remove from these Schedules .

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
6	<p>Tonbridge & Malling</p> <p>Sheerness Recycling Sanderson Way, Tonbridge</p> <p>(Members: Richard Long TD & Christopher Smith)</p>	Local complaints of dust pollution; mud on the road and excessive stacking heights, in apparent breach of the operative planning permission for recycled aggregate & topsoil production.	To monitor and ensure that any corrective measures that may be needed are put into place.	Site operational practices and safeguards have been reviewed, with a focussed effort by the operator in reducing down any surplus material on site.	Since my intervention, I am unaware of any overriding planning control problems on site. Nevertheless, monitoring pressure will be used to maintain that position and to help reassure local residents.
7	<p>Tunbridge Wells</p> <p>DC3/TW/12 CLC Construction Ltd Westdene Five Oaks Green</p> <p>(Member: Alex King MBE)</p>	<p>Material change of use from a former scrapyards to the servicing of utility contracts, with the stockpiling of spoil on site and the exchange of material between jobs, with the remainder being sent for processing and alternative re-use.</p> <p>The site is within the countryside and the Metropolitan Green Belt. It is also close to housing.</p>	<p>To control the level of use on the site pending the outcome of the retrospective planning application.</p> <p>The stockpile having grown in height has been restricted in the interim to the height of the lorry cab of the vehicles bringing the material to the site. That has been clear to all parties, visibly enforceable and largely observed.</p>	Planning permission for a depot use with some waste storage / handling element has now been granted . It involves no mechanical processing of materials on site.	<p>A planning solution has been found to a vexed problem within a sensitive location. The use is now governed to the site and planning conditions are available to monitor and keep the activity within its permitted bounds.</p> <p>In the circumstances, I now propose to remove this item from these Schedules.</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>Canterbury</p> <p>Greenbridge Park Gypsy & Travellers Site, Vauxhall Road, Canterbury</p> <p>(Member: Graham Gibbens)</p>	<p>Flytipping and burning on the adjoining river bank but still within County Council ownership.</p> <p>The flytipping is particularly galling since the site is only moments from KCC's Civic Amenity site almost opposite.</p>	<p>To assert the Internal Enforcement Protocol, requiring County Council land and activities to be managed and controlled to the same standard and requirements as in the private sector.</p> <p>Robust and secure landscaping should help deter further tipping and allow the visual amenity of this section of the site's perimeter to be recovered.</p>	<p>The section of fencing removed to gain vehicular access to the river bank has been reinstated and secured with specially designed bolts. This has physically constrained any further flytipping by vehicle at least.</p> <p>The EA is investigating the overall matter alongside the KCC Gypsy & Travellers Unit. The site is coincidentally within view of the nearby EA offices, allowing close and on-going vigilance by them.</p>	<p>A landscaping scheme is currently being researched and designed by P&E Division's internal Landscape Architect. I shall report to the next Meeting on progress.</p> <p>This case is also subject to Exempt Item 13 within these papers.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
2	<p>Sevenoaks</p> <p>Barnfield Park, Gypsy & Travellers Site, Ash Road, Sevenoaks.</p> <p>(Members: David Brazier & Bryan Sweetland)</p>	<p>Unauthorised importation and deposit of commercial and demolition waste within the rear site paddock.</p> <p>Also, waste depositing within the passing bays and parallel drainage ditches to the site access road.</p> <p>With both bodies of waste being set alight, causing smoke and acrid fumes to the residents and the surrounding area.</p>	<p>To physically stop and deter any further depositing, focussing County Council resources for the moment on alleged strategic waste breaches within the paddock area.</p>	<p>A physical barrier of concrete ‘Milton Pipe’ rings has been set along the most vulnerable paddock field boundary.</p> <p>The inside of the concrete rings have been filled with hardcore from the field deposits, both reinforcing the strength of the barrier and making an early start in the clearance and restoration of the paddock.</p>	<p>Extensive and direct action has brought the major element of waste depositing to a halt. The site access issue will need separate attention. Site security will also need to be actively reviewed; at least during this vulnerable and major post-tipping phase.</p> <p>This case is also subject to Exempt Item 12 within these papers.</p>

Planning Enforcement Protocol
Planning Applications Group, Kent County Council

Introduction

Planning enforcement is a high-profile County Council function. It underpins the Development Management service within the Planning Applications Group. Available powers and controls run with the land and in turn derive from statute. The type and degree of action is discretionary (with some qualifications), allowing a flexible and proportionate approach to cases. Each case in turn, has to be considered on its own individual merits. Addressing planning enforcement issues is not an optional activity for Local Planning Authorities. There is a high Member and public expectation for this authority to act decisively within its own powers and in a seamless way with allied enforcement agencies. The priority is to stop any amenity impacts and damage to the environment, followed by repair to the land.

Purpose of the Protocol

The aim of this Enforcement Protocol is to set the standards against which the performance of the County Council's Planning Applications Group can be judged when investigating an alleged breach of planning control. It sets out how we will respond to individual complaints about breaches of planning control, the process for investigating and recording complaints and the timescales involved. It also deals with breaches identified during routine monitoring of sites.

The Enforcement Role of the Planning Applications Group

As the County Planning Authority, the Council has responsibility for mineral and waste development (county matters). It is also the planning authority for the County Council's own development such as new roads and transportation schemes, educational facilities under Regulation 3 of the Town and Country Planning Regulations. The County Council only has powers to deal with enforcement matters arising from these types of developments. Borough/District Councils deal with all other planning matters, including any mix of uses.

The County Council does not deal with enforcement matters arising from:

- fly tipping (such as a sofa in a ditch),
- developments permitted by the Borough/District Council. This includes the importation and exportation of material to development sites where the material is an integral part of the permitted scheme and is necessary to enable the development to go ahead. The County Council will however have a role in assessing whether any imported material is 'necessary' in order to implement the permitted scheme.¹

¹ It should be noted that the deposit of any additional material is waste depositing and will require planning permission from the County Planning Authority. However, the importation of waste materials to prepare land in anticipation of future development (but where no application has been submitted) would fall within the remit of the County Council.

- Waste activities on sites where there are multiple contraventions for which the district council is the enforcement authority for the other contraventions.

Enforcement of these issues is the responsibility of the relevant Borough/District Council. The enforcement of waste permitting issues is dealt with by the Environment Agency.

The County Council has a responsibility to ensure that planning conditions imposed on planning permissions it grants are adhered to and that any unauthorised activities are brought within planning control either by the grant of planning permission, or through enforcement action or negotiation. The overall aim of the enforcement function is to control unauthorised development for which the County Council is responsible as a planning authority and to secure a remedy of unacceptable impacts. Where there are breaches of planning control, the Authority has discretionary power to take enforcement action, where this is in the public interest.

In dealing with breaches arising from County Council development, it is recognised that the Council is unable to take legal action against itself. Nevertheless, protocols are in place to ensure internal compliance, including the enforcement of development contracts and the reporting of breaches to portfolio holders.

The District and Borough Councils also have the authority to enforce controls over development undertaken by the County Council under Regulation 3 of the Town and Country Planning General Regulations 1992 and providing they obtain the agreement of the County Council for waste management activities.

The Planning Application Group also recognises the merit of pro-active work to reduce the number of enforcement cases. Experience has shown that often the most substantive breaches of control stem from the errant disposal of spoil from permitted sites. The Group therefore implements a number of initiatives to address this issue. These include:

- Spoil managing initiatives with advice to major developers on available outlets; re-use of surplus materials and on seeking planning permission for alternative sites.
- Liaison role with mineral and waste companies.
- Liaison role with district/borough councils and other agencies to provide an early warning system on potential and developing breaches.
- Planning advice to operators to complement Environment Agency advice already being sought on the waste permitting regime.

Identification of Breaches of Planning Control

There are two main routes to enforcement. The first is reactive and driven by complaints from the public either individually or via parish councils, elected Members, industry or other regulatory bodies. The other route is self-driven and arises from routine monitoring or chance observation and inspection of sites. Potential planning breaches of control can arise on permitted or unauthorised sites.

Experience has shown that the key generator of complaints is unauthorised waste activities, such as spoil disposal in the countryside. Nevertheless, permitted, yet badly managed waste facilities can attract similar complaints.

The Enforcement Framework

Planning enforcement is a complex area of planning law. The legislative framework for enforcement action is principally contained within the:

- Town and Country Planning Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning and Compensation Act 1991
- Local Government Act 2000
- Planning and Compulsory Purchase Act 2004
- Localism Act 2011.

Statutory Instruments include:

- Town and Country Planning General Regulations 1992
- Town and Country Planning (General Development Procedure) Order 1995
- Development Management Procedure Order 2010

In the waste planning field, the European Waste Framework Directive 2008 is further relevant.

National policy guidance on planning enforcement has been streamlined and is now consolidated within the National Planning Policy Framework 2012 (paragraph 207 on page 47). The County Council has the intention of supplementing this guidance from a local perspective through the Minerals & Waste Local Plan process.

Good Practice is also shared through various peer groups that the County Council has joined.

Planning Enforcement Tools

A range of tools is available to the county planning authority in dealing with planning breaches. These include:

Planning Contravention Notice (PCN) - Enables the planning authority to gather information about unauthorised development on land and land ownership.

Breach of Condition Notice (BCN) – used when there is a breach of a condition attached to a planning permission. There is no right of appeal other than on a point of law.

Enforcement Notice – used where there has been a breach of planning control and it is expedient to serve a Notice. This Notice must be served on the owners, occupiers and all other parties who have an interest in the land affected by the Notice. It comes into effect not less than 28 days after its issue in which time an appeal can be made. Any appeal stops the Notice taking effect until it is determined. A Stop Notice can be issued to arrest the activity up to the period of confirmation (or otherwise) of any Enforcement Notice.

Stop Notice – used where it is necessary to stop activities pending an Enforcement Notice taking effect or when an appeal has been lodged against the Enforcement Notice. A Stop Notice can only be used where an Enforcement Notice has been served. As compensation can be sought against the County Planning Authority against this Notice, a financial cost benefit analysis is required prior to the serving of this Notice.

Temporary Stop Notice – a free-standing action, calling any alleged planning breach to a halt for up to 28 days, as a precursor to further enforcement action.

Injunctive Relief – notwithstanding any other actions being taken, an injunction (interim/emergency or final version) can be sought from a judge in order to restrain any breach of planning control, causing significant harm to local amenity and the environment.

Statutory Power to enter Land – Power to enter onto land to obtain information required for enforcement purposes under s196A and s324 of the Town and Country Planning Act 1990.

Default action (and recovery of reasonable expenses) when the requirements of an Enforcement Notice have not been met. The Authority may enter the land and correct the breach itself using direct powers. This power is likely to be used only in exceptional circumstances.

Standards - Guiding Principles

Discretionary, Rational and in the Public Interest

It should be remembered that the taking of enforcement action is a discretionary function. When taking any action, it needs to be carried out in the public interest. The investigation of alleged breaches of planning control is not however a discretionary task. Investigations need to be carried out in accordance with this Protocol.

The delivery of the enforcement service shall be based upon the principles of fairness, honesty and openness. In carrying out the Group's enforcement function, procedures and decisions shall have regard to the Human Rights Act, 1998 (HRA), Crime and Dis-Order Act 1998 and equal opportunities legislation. Any actions pursued will need to meet these HRA expectations in terms of:

- Justification
- Authorisation
- Proportionality
- Auditability
- Necessity

Any decision to take action (or not to) needs to be rational and capable of scrutiny. In considering whether to proceed, account needs to be given to the possibility of maladministration, which may arise where enforcement action was clearly necessary and has not been taken.

In accordance with the proportionality principle, it is important that any action taken is reasonable and measured given the breach of control. Formal action for instance would not be needed against a trivial or technical breach of control which causes no harm to amenity in the area surrounding the site. Should harm apply however (e.g. from dust, noise and groundwater impacts) there is a particular need to maintain the integrity of specially protected areas – i.e. RAMSAR sites (wetlands of international importance), Special Protection Areas, Special Areas of Conservation, Sites of Special Scientific Interest, Scheduled Ancient Monument, Areas of Outstanding Natural Beauty and conservation areas and listed buildings.

In general, enforcement action should only be taken when a breach is unacceptable on planning grounds. However, in deciding whether to take action arising from a breach of condition, the Group shall have particular regard to breaches of any conditions, that were imposed to protect or mitigate environmental or amenity impacts (without which, planning permission would not have been granted).

The scale and the determined nature of a breach of planning control shall be taken into account in determining the nature of any enforcement action. The level of co-operation being shown by the alleged contravener is another important factor. A decision not to take action must be capable of being justified. In such cases, a written record has to be kept setting out why action was not pursued. A copy is retained on file.

Relevant Authority

Any action should relate to planning considerations and not attempt to substitute for action by other agencies (such as Environment Agency or District/Borough Councils) under their legislation. Upon receipt of a breach relating to another authority or agency's interest, details shall be forwarded to that party, as quickly as possible and the complainant advised accordingly. This referral will normally take place within 3 days of establishing the relevant jurisdiction to deal with the complaint.

The planning enforcement service is discretionary and the use of resources within the Group will need to be balanced against the statutory development management (control) function and the County Council's corporate priorities. In striking a balance, it will be necessary for the Group to deal strictly with its own enforcement responsibilities. Where the County Council and the District/Borough Council or the Environment Agency has a potential enforcement interest, the Group will negotiate with the other interested parties the means to bring out an effective enforcement solution. This will often result in cross-authority working.

Informal or Formal Solution?

As far as possible, the authority seeks to deal with any breach of planning control by negotiation and informal action, supported if appropriate through the submission of a planning application to help regularise the activity. The Group will avoid lengthy negotiations unless it is clear that they are likely to lead to a satisfactory remedy. Where swift action is taken to remedy breaches of planning control, it will not normally be necessary to take formal enforcement action.

If in seeking to resolve a breach of planning control an officer considers that a retrospective application is unlikely to be successful, this informal opinion shall be forwarded to the operator/landowner at the earliest opportunity.

In determining the appropriate course of action, consideration will be given to the criteria set out in Figure 1. In the case of significant risk of irreversible harm to the priority 1 areas set out in Figure 1, it is recognised that formal action may be more likely.

In more serious cases where formal notices and/or injunctions are not complied with, the authority shall adopt the principles of the Police and Criminal Evidence Act 1984 (PACE) and Regulation of Investigatory Powers Act 2000 (RIPA), in collecting evidence for a potential court case.

Health and Safety Considerations

The planning enforcement service has to be carried out within Health & Safety rules. That is to protect officers in the conduct of the work. The authority has powers of entry to any land where breaches are suspected (under s196A and s324 of the Town and Country Planning Act 1990). A number of more serious cases require police protection in the execution of these duties. All complaints received from members of the public and other operators have to be treated as confidential and are data protected. Release of such information is strictly forbidden for reasons of personal safety.

County Council Development

If the breach concerns development by the authority itself (Regulation 3 development or joint Regulation 3 development), the matter should be resolved through internal procedures and sanctions. The County Council is unable to take legal action against itself. In the event that formal action is necessary, this could be pursued by the relevant district / borough council. A contingency is therefore in place for serious breaches of planning control to be referred to the borough / district council for formal enforcement as a last resort and on a case by case basis.

Timescales

It is important to recognise the need for some flexibility in the timescales needed to resolve breaches of planning control. Negotiations may take time but are often the key to a good outcome. In more serious cases, the emphasis will be on balancing the urgency to remedy the planning breach with mounting a legal action, with the best chance of success. Action in the courts requires evidence to prove the offence against an individual or company 'beyond reasonable doubt.' The collation of such evidence is time consuming. Pre-trial delays are also common.

Procedure for Investigating a Potential Breach of Planning Control

This procedure will be used when dealing with complaints concerning potential breaches of planning control brought to the attention of the County Planning Authority.

The County Planning Authority will investigate every complaint concerning a potential breach of planning control it receives regarding minerals and waste management matters for which it is the planning authority and for alleged breaches relating to County Council developments (Regulation 3 development).

Action Upon Receipt of Details of a Potential Breach of Planning Control

Upon receipt of details of an alleged breach, an **initial assessment** shall be made as to whether the breach potentially falls within the **High Priority** rating on Figure 1. If so, the details of the breach shall be registered and normally allocated to a case officer within 1 working day of receipt.

In all other cases, details should normally be registered and forwarded to a case officer within 2 working days of receipt.

In order that the case officer can keep all parties informed it is preferable that complaints are not made anonymously. Personal details will remain strictly confidential.

Within 2 days of receipt of details:

- Where the potential breach has been identified as a result of a complaint, it will be **acknowledged** within 2 working days and the complainant will be advised of the case officer dealing with the complaint.
- An **initial assessment** shall be made as to whether the details clearly relate to a breach of control for **another local authority or agency** to address. If so, the details shall be forwarded to the relevant authority/agency as soon as possible, normally within 3 working days.

Upon receipt by the Case Officer

The Case Officer shall **assess the potential seriousness** of the alleged breach of planning control against the table set out in Figure 1. This will determine the timescales that will normally be used to commence an investigation

The advice in the Guiding Principles section above shall be used to **determine the appropriate means of resolving** any breach. In particular, negotiations will form an important part of the process.

Where a breach of planning control is established, **the operator/occupier** or the **relevant County Council officer /joint party representative** (in the case of joint development with the County Council) will be **advised** in writing of:

- nature of the breach of planning control;
- the enforcement powers likely to be used by the county planning authority;
- the nature and extent of work necessary to address the planning breach;
- the time allowed to voluntarily carry out necessary work to remedy the breach;

- of the opportunity to apply for planning permission to cover the unauthorised development;

Unless there is an immediate and significant risk to the environment, negotiation and resolution by **informal action will normally be pursued** prior to the taking of any formal enforcement action. However, this is usually conditional on the co-operation of the operator/occupier and on the breach having stopped. **Where a negotiated solution is sought:**

- The Group will seek within 2 weeks of being notified of the breach of planning control, a written statement of intent from the land owner or operator to remedy the breach within an agreed specified timescale.
- The means to remedy the breach of planning control should be concluded within the agreed timescale set out in the above statement of intent. The timescale will need to take account of the complexity of the issue, and seasonal implications. The objective is to resolve the breach in the most effective way, balancing environmental concerns. As a guide, the Unit would usually expect minor breaches to be resolved within 3 months of the breach of planning control being identified.
- After this period, unless there are exceptional circumstances then formal enforcement is likely to be pursued;
- In deciding whether to take formal action, consideration needs to be given to the good practice advice supporting enforcement action and the above guiding principles.

A **site visit** will normally form part of the investigation, although in some instances it may be possible to resolve a complaint by reference to the extant planning permission or by discussion with the operator/occupier.

Where a site visit is undertaken as part of the investigation, a note shall be taken of the visit and placed on file. The note should be a full and accurate record and drafted in the light that it could form the basis of a legal document. Similarly, a **note of any discussions** with the operator/occupier or an assessment of the planning permission shall be placed on file.

Where appropriate, **liaison** will be undertaken **with other agencies** (ie Environment Agency, Borough/District Council, Highway Authority) to establish whether the complaint may affect their interests or result in a breach of legislation administered by them. On occasions joint action may be pursued with those other parties. If the more detailed assessment establishes that the potential breach rests solely with another agency, then the details will be referred to them as speedily as possible (normally within 3 working days), and the complainant advised accordingly.

Where immediate action is required to remedy a breach of planning control, then **justification** shall be given in writing to the **operator/occupier or the relevant County Council officer/joint party representative** (in the case of County Council development or joint development with the County Council). This notification shall be given within 5 days of the breach being established.

The **complainant** shall be kept **advised** of progress in dealing with the complaint on a regular basis. Where progress is given in a telephone conversation, then a record of the telephone conversation shall be placed on file.

The Group will seek to advise the complainant and the operator/ landowner of **initial conclusions** within 10 working days.

The operator, landowner or relevant County Council Officer/joint party representative shall be advised of the final outcome and any key stages of the process of the investigation. Where, following investigation a reported breach is found to be incorrect, then the complainant and the party the subject of the alleged breach shall be provided with formal notification of this.

The **progress** of any investigation and changes on site shall be **reviewed** at the Group's monthly business meeting and then **formally reported** to the County Council's Regulation Committee.

Member Involvement

Once County Council involvement has been established in any alleged breach of planning control, the **local County Member** shall be **advised** in writing at the earliest opportunity. They shall then be advised at key stages and of the eventual outcome of the case.

All planning control breaches shall be reported to the Regulation Committee, which meets three times a year. The Group has delegated authority in dealing with enforcement issues, although action containing a risk of compensation has to be referred to the Regulation Committee or a specially convened Members Panel. Similarly, any enforcement matter or local Member concern may be referred to the Committee at the request of the Chairman.

FIGURE 1: STANDARD RESPONSE TO ALLEGED BREACHES OF PLANNING CONTROL

PRIORITY RATING	SERIOUSNESS OF ALLEGED BREACH	RESPONSE TIME ¹	Notes
HIGH	<p>Significant risk of irreversible harm²</p> <p>Activities causing direct and potentially irreversible harm on or Within Priority 1 areas i.e.</p> <ul style="list-style-type: none"> <input type="checkbox"/> internationally designated sites, including: RAMSAR, SPAs and SACs <input type="checkbox"/> nationally designated sites, such as SSSIs, Scheduled Ancient Monuments, habitats of statutorily protected species, AONB, listed buildings, conservation areas and protected trees <input type="checkbox"/> Human health and safety <input type="checkbox"/> Water and archaeological resources 	As soon as possible (but at least within 3 working days)	<p>Typically includes direct:</p> <ul style="list-style-type: none"> <input type="checkbox"/> removal of habitat / trees / hedgerows / and other protected features (e.g. listed walls) <input type="checkbox"/> tipping on original soils <input type="checkbox"/> tipping of non-inert waste <p>Especially by known contravenors, without planning permission and involving an activity which is unlikely to be granted permission</p> <p>This may include excessive noise, dust, nuisance or large vehicles using unsuitable rural sites.</p>
MEDIUM	<p>Potential to cause harm to the environment</p> <p>Indirect impacts to the Priority 1 areas (listed above)</p> <p>Impacts to Priority 2 areas, including:</p> <ul style="list-style-type: none"> <input type="checkbox"/> all other designated areas (e.g. MGB, SLA, Local Landscape Areas....) <input type="checkbox"/> sites within consultation safeguarding zones (e.g. Groundwater Protection Areas, Land liable to Flood) <p>and disturbance to</p> <ul style="list-style-type: none"> <input type="checkbox"/> third parties, causing and having potential to cause a loss of amenity <input type="checkbox"/> human health and safety 	Normally within 5 working days of receipt of details of potential breach of planning control	<p>Includes direct and indirect impacts and disturbance from:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Traffic (e.g. mud on the road) <input type="checkbox"/> Noise <input type="checkbox"/> Odour <input type="checkbox"/> Visual intrusion <input type="checkbox"/> Windblown dust <input type="checkbox"/> Contaminated water (with attendant risk of pollution to groundwater resources) <p>Damage to and removal of landscape features (e.g. trees, hedgerows, verges & walls)</p> <p>Also, non-approval / compliance with conditions precedent (e.g. starting to operate a waste transfer station before details are approved and site preparation works have been done)</p>
LOW	<p>Minor breaches of conditions on permitted sites</p> <p>Minimal disturbance to the environment and local amenity</p>	Within 14 days of receipt of details of potential breach of planning control	<p>Often emerges during site monitoring and usually involves:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Minor changes to approved schemes (typically location or design related) <input type="checkbox"/> Late submission of details (not relating to a condition precedent - e.g. landscaping scheme)

¹ This relates to the period in which to commence investigation. The length of time necessary to resolve the breach of planning control will vary on a case by case basis.

² When deciding priority, weight needs to be given to the nature and scale of the irreversible damage and what is the impact of delaying action.

Monitoring

Sites where breaches of planning control have been identified shall be scheduled for regular monitoring. Details of the scale and frequency shall be set out in the Group's Monitoring Programme and influenced by the nature of the breach of planning control and the problems identified.

Local Liaison Groups are in place with the main mineral and waste companies. Any unresolved breaches of planning control shall be raised at the relevant Liaison Group with the intention of swiftly resolving the issue to the satisfaction of the County Planning Authority and affected parties.

Protocol Review

The Protocol shall be reviewed when circumstances such as key changes in legislation arise which need to be reflected in the conduct of our planning enforcement service. This frequency however, may be increased if the local guidelines mentioned under the 'Enforcement Framework' above come into play. They would be updateable on a 'rolling' basis.

Contacts

Kent County Council

Complaints concerning alleged breaches of planning control relating to minerals and waste development and County Council development should preferably be made in writing and addressed in general to:

Sharon Thompson,
Head of Planning Applications Group,
Kent County Council
Invicta House
County Hall
Maidstone
Kent. ME14 1XX

Telephone: (01622) 221070
Fax (01622) 221072

email: planning.applications@kent.gov.uk

More specifically, the following Team Leaders may be contacted according to the nature of the alleged breaches:

Robin Gregory (01622) 221067 (robin.gregory@kent.gov.uk)	- Unauthorised minerals and waste matters
Mike Clifton (01622) 221054 (mike.clifton@kent.gov.uk)	- Waste breaches on permitted sites
Jim Wooldridge (01622) 221060 (jim.wooldridge@kent.gov.uk)	- Mineral breaches on permitted sites

Jerry Crossley (01622) 221052 - County Council Developments
(jerry.crossley@kent.gov.uk)

Consideration might also be given to contacting your County Councillor. Details of councillors and the areas they represent are available on the Kent County Council website, www.kent.gov.uk within page <https://democracy.kent.gov.uk/mgMemberIndex.aspx?bcr=1> or by telephone on (0300) 3335540.

Other Useful Contacts

The Environment Agency (03708) 506506 Medway Council (01634) 333333

The Borough/District Councils deal with the enforcement issues arising from other types of development. The main office numbers are set out below.

Ashford Borough	(01233) 331111
Canterbury City Council	(01227) 862000
Dartford Borough Council	(01322) 343434
Dover District	(01304) 821199
Gravesham Borough	(01474) 564422
Maidstone Borough	(01622) 602000
Sevenoaks District	(01732) 227000
Shepway District	(01303) 853000
Swale Borough	(01795) 417850
Thanet District	(01843) 577000
Tonbridge & Malling BC	(01732) 844522
Tunbridge Wells Borough	(01892) 526121

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

Agenda Item 10

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