

# **REGULATION COMMITTEE**

**Tuesday, 13th May, 2014**

**10.00 am**

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





## AGENDA

### REGULATION COMMITTEE

**Tuesday, 13th May, 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. Substitutes
2. Declarations of Interests by Members in items on the Agenda for this meeting.
3. Minutes (Pages 5 - 24)
  - (a) Committee: 28 January 2014
  - (b) Mental Health Guardianship Sub-Committee: 29 January 2014  
(Information)
  - (c) Member Panels: 18 March 2014  
8 April 2014
4. Home to Schools Transport Appeals Update (Pages 25 - 26)
5. Update from the Commons Registration Team (Pages 27 - 28)
6. Update on Planning Enforcement Issues (Pages 29 - 46)

7. Other Items which the Chairman decides are Urgent

Peter Sass  
Head of Democratic Services  
(01622) 694002

**Friday, 2 May 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, 28 January 2014.

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, Mr A D Crowther,  
Mr J A Davies, Mr T Gates, Mr P M Harman, Mr P J Homewood, Mr T A Maddison,  
Mr J M Ozog, Mr R J Parry (Substitute for Mrs V J Dagger), Mrs E D Rowbotham and  
Mr J N Wedgbury

IN ATTENDANCE: Mr A Ballard (Senior Democratic Services Officer), 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) and Mr A Tait (Democratic Services Officer)

**UNRESTRICTED ITEMS****1. Membership**

*(Item 1)*

The Committee noted the appointment of Mr A D Crowther in place of Mrs M Elenor.

**2. Minutes**

*(Item 4)*

(1) The Minutes of the Regulation Committee Member Panel meeting of 3 December 2013 were tabled.

(2) RESOLVED that the Minutes of the Committee meeting held on 3 September 2013 are correctly recorded and that they be signed by the Chairman together with the following Member Panel meetings:-

- (a) 24 September 2013;
- (b) 15 October 2013;
- (c) 26 November 2013 (Kingsmead);
- (d) 26 November 2013 (Ripple);
- (e) 3 December 2013; and
- (f) 17 December 2013.

**3. Transport Appeal statistics**

*(Item 5)*

(1) The Senior Democratic Services Officer gave an overview of Home to School transport appeal statistics for the period from 1 January 2013 to 31 December together with a brief comparison with transport appeal statistics in 2012.

(2) RESOLVED that the report be noted.

#### **4. Update from the Commons Registration Team**

*(Item 6)*

(1) The Committee considered a report by the Head of Regulatory Services which summarised the current position in respect of applications to register Town and Village Greens.

(2) The Commons Registration Officer informed the Committee of progress with the Pioneer Implementation of Part 1 of the Commons Act 2006.

(3) RESOLVED that the report be noted.

#### **5. Update on Planning Enforcement Issues**

*(Item 7)*

(1) The Committee discussed a report by the Head of Planning Applications Group which gave an update on planning enforcement and monitoring work since the September meeting of the Committee.

(2) The Head of Planning Applications Group brought forward a revised recommendation in respect of Orchard Place, Heniker Lane, Sutton Valence (Site 7 in Appendix 1 of the report). This involved the deletion of the final paragraph and its replacement by:-

“I will retain a watching interest in this site pending further information from MBC which may help to clarify jurisdiction.”

(3) The Head of Planning Applications Group brought forward a revised recommendation in respect of Sheerness Recycling, Sanderson Way, Tonbridge (Site 6 in Appendix 2). This involved the addition of the following final paragraph:-

“In the circumstances, I now propose to remove this item from these Schedules.”

(4) The Committee agreed the revised recommendations set out in (2) and (3) above.

(5) RESOLVED that:-

(a) subject to (2) to (4) above, endorsement be given to the actions taken or contemplated in the respective cases set out in paragraphs 2 to 26 of the report and those contained within Schedules 1,2 and 3 as appended to the report; and

(b) the minor revisions to the County Council’s Planning Enforcement Protocol be noted as set out in Appendix 4 of 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.)*

#### **6. Update on Planning Enforcement issues at Larkey Wood, Chartham**

*(Item 10)*

(1) The Head of Planning Applications Group reported on planning enforcement issues at Larkey Wood Farm, Chartham. Since the previous meeting of the Committee, the alleged contravenor had been convicted for firearm offences and had been sentenced in absentia to 12 months in prison.

(2) The Head of Planning Applications Group reported that it was likely that the site would be repossessed and that there were grounds for optimism that it would be fully restored if this were to occur. She therefore outlined an enforcement strategy which the Committee agreed.

(3) RESOLVED that the enforcement strategy outlined in paragraphs 5 to 16 of the report be endorsed.

#### **7. Update on Planning Enforcement issues at Thirwell Farm, Hernhill**

*(Item 11)*

(1) The Head of Planning Applications Group reported on planning enforcement issues at Thirwell Farm, Hernhill. The site and its surroundings were now severely damaged. The land had been raised uncontrollably, adversely affecting the land drainage profile. The adjoining public footpath had been obstructed and a marked visual impact had been caused to the local landscape. She therefore recommended an enforcement strategy which the Committee agreed.

(2) RESOLVED that endorsement be given to the enforcement strategy outlined in paragraphs 5 to 10 of the report.

#### **8. Update on Planning Enforcement issues at Barnsfield Park, Ash**

*(Item 12)*

(1) The Head of Planning Applications Group reported on planning enforcement issues at Barnsfield Park, Ash, Sevenoaks. The report concerned waste depositing issues on the sides of the access road and, more seriously, on the rear paddock of the KCC Managed Gypsy and Travellers site at Ash, Sevenoaks. The waste had also been set alight causing general Environmental Health issues for the area from smoke and acrid fumes as well as health and safety concerns for the residents.

(2) The Committee agreed the enforcement strategy proposed by the Head of Planning Applications Group and expressed its appreciation of the work of both the Planning Enforcement Team and the Gypsy and Traveller Unit in the very trying circumstances of this case.

- (3) RESOLVED that endorsement be given to the enforcement strategy outlined on paragraphs 3 to 20 of the report.

### **9. Update on Planning Enforcement Issues at Greenbridge Park, Vauxhall Road, Canterbury**

*(Item 13)*

(1) The Head of Planning Applications Group reported on planning enforcement issues at Greenbridge Park, Vauxhall Road, Canterbury, which had seen the commencement of flytipping and burning on land in KCC's ownership just outside the boundary of a Gypsy and Traveller site. She asked for the Committee's support for an on-going commitment to keep such activities at bay and to achieve a robust solution to the problem.

- (2) RESOLVED that endorsement be given to the enforcement strategy outlined in paragraphs 3 to 12 of the report.

### **10. Update on Planning Enforcement issues at Astley Avenue, Dover**

*(Item 14)*

(1) Mr G Cowan informed the Committee that he knew the alleged contravenor who was a fellow Member of Dover TC. This did not constitute a close personal relationship and he was able to consider this matter with an open mind.

(2) The Head of Planning Applications Group reported on planning enforcement issues Astley Avenue, Dover. The site comprised land in the open countryside which was clearly visible from Roman Road, Dover. A large stockpile of waste materials had been imported and stored on the land without the benefit of planning permission.

- (3) RESOLVED that endorsement be given to the enforcement strategy outlined in paragraphs 4 to 14 of the report.



## REGULATION COMMITTEE MENTAL HEALTH GUARDIANSHIP SUB-COMMITTEE

MINUTES of a meeting of the Regulation Committee Mental Health Guardianship Sub-Committee held in the Swale 1, Sessions House, County Hall, Maidstone on Wednesday, 29 January 2014.

PRESENT: Mr M J Harrison (Chairman), Mrs M Elenor, Mrs S Howes, Mr S J G Koowaree and Mr C P Smith

IN ATTENDANCE: Ms C Fenton (Learning Disability and Mental Health Officer), Macdonald (Training Manager - Mental Health) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### **1. Minutes - 30 January 2013** (Item 2)

The Minutes of the meeting held on 30 January 2013 were noted, having been previously approved at the Regulation Committee meeting on 18 June 2013.

#### **2. The Local Authority's Guardianship Register** (Item 3)

(1) The Learning Disability and Mental Health Officer set the scene for the work of the Panel. She explained that amendments to the Mental Health Act in 2007 had introduced a requirement for elected Members to "audit the effectiveness of receipt and scrutiny of documents. The Panel's role was to discharge this function.

(2) The detailed work in this field was undertaken by a Working Party consisting of three officers from the KCC Families and Social Care Directorate and two co-opted independent members with recent operational management experience within mental health. The Working Party scrutinised the relevant papers to ensure that the Guardianship Register was correct in terms of the names on it, of the legal requirements having been met and of the grounds for guardianship continuing to apply.

(3) The work undertaken had resulted in the introduction of robust processes and guidance as well as a thorough review of the Guardianship Register to correct any administrative errors. The Working Party also intended to introduce a more robust process for monitoring the number and outcome of applications to the Mental Health Review Tribunal during 2014.

(4) The Learning Disability and Mental Health Manager reported that since the last meeting of the Sub-Committee in January 2013, 3 guardianship orders had been discharged, 4 had been renewed and five new guardianship orders had been accepted. There were currently eight people subject to guardianship in Kent.

- (5) KCC was required to provide the Department of Health with annual data on those subject to guardianship. In April 2013 KCC had reported that four new orders had been accepted and one discharged during the previous 12 months. The next submission was due in early April 2014.
- (6) The Learning Disability and Mental Health Manager then gave a presentation on guardianship orders. The slides from this presentation are contained within these minutes.
- (7) The Sub-Committee agreed that it would wish to see the ages of those subject to guardianship orders in future.
- (8) RESOLVED that the contents of the report be noted together with the details of the presentation, the list of closed cases since January 2013 (set out in Appendix 1) and the current guardianship register (set out in Appendix 2).

## REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Thanington Resource Centre, Thanington Road, Canterbury CT1 3XE on Tuesday, 18 March 2014.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr A D Crowther, 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

#### **1. Application to register land known as Montefiore Woodland at Ramsgate as a new Village Green**

*(Item 3)*

(1) The Commons Registration Officer began her presentation by explaining that the land in question was owned by Ramsgate Town Council who wished to voluntarily register it as a Village Green.

(2) The Commons Registration Officer then explained that the Commons Act 2006 had introduced a provision which enabled land to be voluntarily registered if the owner applied and with the consent of any relevant leaseholder of, and the proprietor of any relevant charge, over the land.

(3) The land consisted of some 1.45 acres of woodland. Land Registry searches had revealed that it was wholly owned by the Town Council.

(4) An objection to the application had been received from Mr S Berger who represented Samber Ltd. This was a registered charity, whose land lay north west of the application site. The charity wished to rebuild the theological college which had once stood on the application site, having been built in the late 1860s and demolished in 1964. The land had been owned by Sir Moses Montefiore who had set up a trust in 1866 with guidelines as to the administration of the college and a strict prohibition on the sale of the land. The Charity considered that Village Green status would conflict with its aim of rebuilding the college. It had therefore asked for the application to be amended so as to facilitate the reconstruction of the college.

(5) The Commons Registration Officer said that Mr Berger's representations had been forwarded to the applicants for comment. Ramsgate TC had taken the position that the trust had been superseded by various land transactions and that the Town Council was the current lawful landowner.

(6) The Commons Registration Officer said that she had taken advice from KCC Legal Services on the comments made by Mr Berger and on the Copy of the Register of Title. The advice received had been that the land had been registered to Ramsgate TC and that there was no evidence to suggest that any error had been

made in the registration. Land Registry guaranteed the Town Council title to the land. There was, therefore, no reason in respect of ownership for registration not to proceed as requested by the landowner.

(7) The Commons Registration Officer concluded her presentation by saying that, having established that Ramsgate TC was the legal owner of the land, it was still necessary to establish that the land was situated in an identifiable locality. In this instance, the appropriate locality was the Ramsgate TC electoral ward of Sir Moses Montefiore. She therefore recommended that the land should be formally registered as a Village Green.

(8) Mr David Holder identified himself as a representative of Samber Ltd. He explained that the charity wished to rebuild the theological college in respect of Sir Moses Montefiore's wishes. He had been a very famous philanthropist during the 19<sup>th</sup> Century and it was very appropriate that his memory was preserved in this way.

(9) Mr Holder said that Samber Ltd had only received the report a week before the meeting and that an adjournment was requested to enable a thorough examination of the legal aspects of the case.

(10) The Chairman ruled that Samber Ltd had been given sufficient time by the Commons Registration Officer to examine any aspect of the case they wished. He noted that she had written to Mr Berger on 20 February 2014, inviting him to check the Land Registry records if he had any doubts about the land ownership question. This had followed Mr Berger's original letter of 4 September 2013.

(11) The Democratic Services Officer advised that the agenda had been published five clear working days ahead of the meeting in accordance with the provisions of the Local Government Act. The speaking procedures made clear that this was an opportunity for members of the public to set out what they felt was missing from or insufficiently stressed in the report, rather than for the introduction of new evidence.

(12) Mr Holder stated that, in his view, the application had not been properly made. He referred to the Commons (Registration of Town and Village Greens (Interim Arrangements) (England) regulations 2007 which required an application to be made on a Form 44 and to be accompanied by a statutory declaration. The Commons Registration Officer explained that the regulations referred to by Mr Holder had been superseded by the Commons Registration (England) Regulations 2008 as a result of Kent's participation in the pioneer implementation of Part 1 of the Commons Act 2006. She confirmed that the application had been correctly made.

(13) Mr Holder referred to the Copy of the Register of Title set out in Appendix C of the report. He noted that section A2 made an exception of the disused tunnel running underneath the land from the registration. He said that if, for any reason, it became necessary for work to be carried out on the tunnel, Village Green status for the land above would make it difficult to do so.

(14) The Chairman ruled that this was not a matter that the Panel was entitled to consider. He added that he, nevertheless, did not believe that this question should be of concern, as the tunnel was disused and the entrances to it were not on the land in question.

(15) Mr Holder then said that section C of the Copy of Register of Title made reference to both Custodian and Managing Trustees. This implied that there was some doubt in respect of whether the Town Council fully owned the land.

(16) The Commons Registration Officer referred to the advice from KCC Legal Services, which had been given in the light of both Mr Berger's letter of 4 September 2013 and of the Copy of the Register of Title.

(17) Mr S C Manion moved, seconded by Mr A D Crowther that the recommendations of the Head of Regulatory Services be agreed.

*Carried unanimously.*

(18) RESOLVED that the applicant be informed that the application to register the land known as Montefiore Woodland at Ramsgate has been accepted and that the land subject to the application be formally registered as a Village Green.

## **2. Application to register land known as Seaton Meadow at Wickhambreaux as a new Village Green**

*(Item 4)*

(1) Members of the Panel visited the site prior to the application. This visit was attended by Mr and Mrs C Perkins and Mr D Pierce (landowners).

(2) The Commons Registration Officer introduced the application which had been made under section 15 of the Commons Act by Wickhambreaux Parish Council. She confirmed that all the statutory consultation arrangements had been carried out.

(3) The Commons Registration Officer said that the land had been owned by the Church Commissioners until 2009 when it had been sold in different plots to four separate landowners.

(4) The Commons Registration Officer then said that the application had been considered by the Panel on 15 November 2011 where it had been decided that a non-statutory Public Inquiry would be held to clarify the issues. This had taken place in November 2012 and February 2013, and the Inspector had provided a detailed report dated 13 December 2013.

(5) The Commons Registration Officer moved on to outline the Inspector's findings in respect of the legal tests. The Inspector had concluded that use of the land had been "as of right" because use had clearly not been by force or stealth. She had not accepted the landowners' view that the tenant farmer waving and acknowledging people using the land constituted implied permission, and had therefore concluded that use had also not been with permission and that the test had consequently been met.

(6) The second test was whether use of the land had been for the purposes of lawful sports and pastimes. The Inspector had found that the vast majority of use had consisted of walking along a limited number of defined routes. Given the size of the land, she had concluded that this did not suggest general recreational use of a nature which would have led a reasonable landowner to consider that a right was being asserted to indulge in lawful sports and pastimes over the whole land. The test had not been met because the majority of use was not "qualifying use" and the

remainder (which was no more than “trivial or sporadic”) was insufficient to give rise to Village Green registration.

(7) The Inspector had then considered the third test, which was whether use had been by a significant number of inhabitants of a particular locality or a neighbourhood within a locality. The Inspector had found that the two civil parishes of Wickhambreaux and Ickham did constitute a locality. She had, though, not accepted that the applicants had been able to identify a sufficiently cohesive neighbourhood to meet the requirements of the Commons Act 2006. Consequently, she had concluded that the test had not been met. She had, therefore, not gone on to consider whether use had been by a significant number. The Commons Registration Officer said that in the event that the Inspector *had* been satisfied on the neighbourhood question, her findings in respect of the lawful sports and pastimes test would have precluded her from finding that use had been by a significant number of its inhabitants.

(8) The Commons Registration Officer briefly explained that the Inspector had been satisfied that use of the site had ceased less than two years prior to the application, and that use had taken place over a period of twenty years or more (apart from a small amount of the land which had been enclosed for two months in 1998 by the Environment Agency for borehole drilling works).

(9) The Commons Registration Officer moved on to summarise the Inspector’s conclusions which were that the application should fail because the applicants had been unable to identify a cohesive neighbourhood; that the Registration Authority had no power to substitute a differently defined neighbourhood (which would, in any case, have been unfair to the landowners if it had done so); that the majority of use of the land had been for “rights of way” type use rather than for lawful sports and pastimes over the whole of the land; and that the amount of use that qualified as “lawful sports and pastimes” was insufficient for registration to take place.

(10) The Commons Registration Officer said that the Inspector’s report had been sent to the applicants and the landowners for comment. Wickhambreaux PC had expressed its disappointment at the Inspector’s recommendations, pointing to the 160 user evidence questionnaires, 60 witness statements and the photographic evidence it had provided. One of the landowners had replied giving his full support to the recommendations and praising its meticulous detail.

(11) The Commons Registration Officer recommended to the Panel that it should reject the application for the reasons set out in the Inspector’s report.

(12) Mr C Perkins (landowner) said that he did not agree with Wickhambreaux PC’s claim that the issue had been one of access. The landowners had made a number of offers to the Parish Council. These were access during daylight hours, the permitted use of 4 acres of the land, and a permissive footpath along the river bank. All of these offers had been rejected.

(13) Mr Perkins said that Wickhambreaux PC had complained about the number of witnesses that the Inspector had chosen to hear from. He disagreed with this view because there had been 23 witnesses from the applicant’s side. This would have been more than sufficient to make the case if it had been sufficiently strong. He also disagreed with the Parish Council’s view that the user evidence questionnaire should contain a legal definition of neighbourhood, noting that the applicants had provided guidance notes to their witnesses.

(14) Mr Perkins said that he wished to thank Ms Melanie McNeir and the Public Rights of Way Team for the professionalism and impartiality that they had shown throughout the process.

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

*Carried unanimously*

(16) RESOLVED that for the reasons set out in the Inspector's report dated 13 December 2013, the applicant be informed that the application to register land known as Seaton Meadow at Wickhambreaux has not been accepted.

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## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 8 April 2014.

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

ALSO PRESENT: Mr C P Smith

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

### UNRESTRICTED ITEMS

**3. Application to register land known as Masefield Way at Tonbridge as a new Village Green**  
*(Item 6)*

(1) The Commons Registration Officer informed the Panel that the application had been made by Mr R Hewitt under section 15 of the Commons Act 2006. It had been accompanied by 18 User Evidence Questionnaires.

(2) The site in question consisted of an open area of land, some 0.4 acres in size with a grassed surface. Access to this land was along surfaced pathways, which were estate paths rather than recorded public rights of way.

(3) The Commons Registration Officer reported that the site was owned by Russet Homes Ltd. They had made no representations regarding the application despite having been informed of it.

(4) The Commons Registration Officer went on to briefly consider each of the legal tests. She said that there had been no evidence of any challenge having been made to recreational use and that therefore such use appeared to have taken place "as of right." The evidence also strongly suggested that the site had been used for lawful sports and pastimes such as ball games and general play on a daily basis.

(5) The Commons Registration Officer turned to the question of whether use had been by a significant number of inhabitants of a particular locality or neighbourhood within a locality. In this instance, the neighbourhood was Brook Street Estate within the locality of Judd Ward in Tonbridge. The evidence provided indicated that the land had been in general use by the Brook Street Estate community (particularly children) on a regular basis. This test had therefore been met.

(6) The Commons Registration Officer concluded her presentation by saying that the evidence clearly suggested that use of the land had taken place over a period of twenty years and that it had continued up to and beyond the date of application. She

recommended that, as all the legal tests had been met, registration should take place.

(7) Mr C P Smith (Local Member) was present for this item pursuant to Committee Procedure Rule 2.27. He said that he had been surprised to receive the report as neither he nor Mr Long, his fellow Local Member had been aware of the application. He accepted the Commons Registration Officer's assurance that she had written to him in June 2013 when the application had been made and in December 2013 to say that it was under consideration. He agreed that the land was well used and said that he had no objection to registration. He also noted that there was another identical patch of land nearby which could also be registered.

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

(9) RESOLVED that the applicant be informed that the application to register the land at Masefield Way in Tonbridge as a new Village Green has been accepted and that the land subject to the application be formally registered as a Village Green.

**4. Application to register land known as The List at Littlebourne as a new Village Green**  
(Item 3)

(1) The Panel Members had visited the site of the application on 8 March 2014. This visit had been attended by Vivian Chapman QC, Ms N Morris and Mr E Newlyn (Rydon Group Ltd) and by Mr F Newing (Landowner).

(2) The Commons Registration Officer reported the views of the Local Member, Mr M J Northey. He had written to her to say that there was very strong local feeling in favour of the application and that, in his view the issues were so complex that they should be resolved by holding a non-statutory public inquiry in order that they could be clarified.

(3) The Commons Registration Officer began her presentation by saying that the application had been made by Littlebourne PC under section 15 of the Commons Act 2006. The site in question consisted of some 22.5 acres of grassland. It was crossed by a public footpath, and access to it was via two other public footpaths which abutted the site. The application had been accompanied by 45 user evidence questionnaires. A further 36 forms had subsequently been submitted in support.

(4) The Commons Registration Officer went on to say that the land in the north eastern section of the site was owned by Littlebourne PC itself. The rest (apart from the PROWs and a tiny parcel of land owned by Canterbury CC) was owned by the Newing family. Rydon Homes Ltd had an option to buy this land, and it was they who had objected to the application. Their grounds for objection were that the land had been in continuous arable use until 2005 and that it could not, therefore have been used for lawful sports and pastimes; that the land had not been used by a significant number of local residents; that there was no evidence to demonstrate that Littlebourne was either a locality or a neighbourhood within a locality; and that a prohibitory notice had been erected on the land in 2006, bringing any "as of right" use to an end.

(5) The Commons Registration then considered the legal tests, all of which needed to be passed in order for registration to take place. The first of these was whether use of the land had been “as of right.” She said that use of the land had not been with secrecy or permission. There had also been no use of physical force. The objectors had, however, provided colour photographs of signs erected at seven parts of the site in 2006. In their view these notices were sufficient to render use of the site contentious.

(6) The Commons Registration Officer said that the applicants had pointed out that none of the user evidence forms had mentioned the notices and that none of the current Parish Council Members could recall their existence. On their view, these notices must have been taken down very quickly, if they had ever been put up. The objectors had agreed that the signs had been torn down very soon after being erected. It was therefore quite possible that the majority of local residents had never seen them.

(7) The Commons Registration Officer then said that, on balance, the fact that the landowner had provided photographs of the signs, and that they had been erected at numerous locations around the site demonstrated that the landowner had made a reasonable attempt to challenge general use of the land. She therefore concluded that use following the erection of the notices had been contentious and therefore by force, and that consequently this test had not been met.

(8) The second test was whether use of the land had been for the purposes of lawful sports and pastimes. The Commons Registration Officer said that the majority of use had been for walking but that there was also evidence of blackberrying, kite flying, ball games and birdwatching. The objectors claimed that most of the use had taken place on the public footpaths or other defined tracks. She said that it was not possible to reach a definitive conclusion on this question and that, if this had been the only point of contention, the correct approach would have been to seek to test the evidence through a non-statutory public inquiry.

(9) The Commons Registration Officer briefly explained that she believed that use had been by a significant number of inhabitants of a particular locality. This was because the evidence user forms indicated that use had been by people from the entire parish of Littlebourne and that the 81 user evidence questionnaires (many of which confirmed that use had been on a daily basis) demonstrated that there had been sufficient use to indicate to the landowner that the land was in general use for recreation.

(10) The fourth test was whether use of the land had continued up to the date of application or, if not, ceased no more than two years prior to the making the application. The Commons Registration Officer said that the application date was 16 April 2013. However, it was arguable that use had ceased to be “as of right” when the “private property” notices had been erected in 2006. If this was the case, the application would have to have failed this particular test.

(11) The Commons Registration Officer then moved on to consider the final test, which was whether use had taken place over a period of twenty years or more. The applicants had claimed that use had been continuous between 1993 and 2013. The objectors had claimed in response (supported by photographs taken during the

1990s) that between 1993 and 2005 the land had been used for arable farming with oil seed rape, barley and wheat all being grown. Some of the user evidence questionnaires had explained that the farming activities had, indeed had an impact on informal recreational use.

(12) The applicants had referred to the recent *Newhaven Beach* case where registration had taken place even though the land had been covered by sea water for 42% of the time. The Commons Registration Officer said that this, was not an analogous case to the one under consideration by the Panel because recreational activities such as swimming and paddling had continued to take place at Newhaven whilst the land had been under water. In this particular case, however, the farming activities had actually interfered with recreational usage. She added that even if local residents had trampled over the crops during this period, this would not have qualified as a lawful sport or pastime. She concluded that this test had not been met because the crop planting activities had created a physical restriction to recreational use during significant periods of the twenty year qualifying period.

(13) The Commons Registration Officer summarised her presentation by recommending that the application should fail because the photographic evidence of the “private property” notices strongly suggested that use had been contested in 2006 and because (even if this evidence were discounted) the agricultural use of the land for significant periods during the qualifying period demonstrated that use of the land had not been continuous.

(14) Mrs Vivienne Spratt (Chairman of Littlebourne PC) said that the local villagers felt very strongly about this application and that use of the land had been by more local residents than had actually completed the user application forms.

(15) Mrs Spratt then said that the issues were not clear and that the only way to resolve them would be to hold a non-statutory public inquiry. The Commons Registration Officer’s report had focussed on the crop planting activities on the land, but had not taken account of the poor crop yield or the bare patches within the areas where this was taking place. Dog walkers allowed their animals to roam the entire field at will. No one had seen the signs which the landowner claimed to have put up in 2006, and the photographs provided were very unconvincing. In any case, they had never been replaced.

(16) Ms Cate Reid (Littlebourne PC) commented on the photographs of the signs by saying that all of them were one dimensional, front-facing only. She noted that the landowner had stated that they had been taken down within 48 hours of being erected. This suggested that, not content with tearing down the signs, the people responsible for doing so had also taken them off the site rather than simply leaving them lying on the ground.

(17) Mr F Newing (Landowner) said that the signs had simply disappeared within 48 hours of being put up.

(18) Mr David Milne addressed the Panel on behalf of the applicants. He said that, as he understood it, the Commons Registration Officer had not seen the need to ask for legal advice. He then referred to the *Newhaven Beach* case where the entire application site had been covered by the sea during 80% of the days in question. Village green status had nevertheless been granted in respect of that application

because recreational activities such as paddling and swimming had taken place on a regular basis. This cast sufficient doubt on the conclusions of the officer's report to merit full testing by a legally qualified individual in respect of this particular application.

(19) Mr Milne then referred to the notices. He said that, by the landowner's own admission, these had only been put up for a period of 48 hours. Case Law did not support the conclusion that this represented a genuine challenge to recreational use by the public. He urged the Panel to take note of the large amount of evidence in support of registration and to submit it for thorough examination at a non-statutory public inquiry.

(20) Vivian Chapman QC addressed the Panel on behalf of the Rydon Group. He said that he agreed with the conclusions of the report because arable farming had taken place on the land in question for 12 years out of the 20 year qualifying period and because of the 7 signs which had been erected as a challenge to recreational use in 2006.

(21) Mr Chapman then referred to a letter from Mr Twyman, the tenant farmer in which he had set out the crops grown on the land between 1993 and 2005. The activities had included ploughing, rolling, cultivating and harvesting, and had taken place from September to August each year. This meant that recreational use of the site would have effectively been interrupted for 11 months each year.

(22) Mr Chapman continued by referring to the photographs of agricultural use set out in Appendix of the report. These, he said, showed the whole land being cropped, with no evidence of it being bare or overgrown. This evidence was supported by numerous statements from people whose evidence was summarised at Appendix C. He quoted from evidence given by 10 of these witnesses and commented that they all accepted that the arable farming had affected the recreational activity and said that this was fatal to the application as it demonstrated that the land could not have been used continuously for a twenty year period for the purposes of lawful sports and pastimes.

(23) Mr Chapman concluded his presentation by saying that the seven photographs of the signs erected in 2006 clearly refuted the applicant's claim that the landowner had known about and acquiesced to public use of the land.

(24) The Commons Registration asked the Panel to note that she was legally trained. She then commented that the Judge in the *Whitney* case had said that a non-statutory public inquiry was an appropriate mechanism for examining a case where there was a dispute of fact. She believed that such circumstances did not fully apply in this case and that it would therefore not be appropriate on this occasion.

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

(26) RESOLVED that the applicant be informed that the application to register land at The List in the parish of Littlebourne as a Village Green has not been accepted.

**5. Application to register land known as Fisherman's Beach at Hythe as a new Town or Village Green**

*(Item 4)*

(1) The Commons Registration Officer tabled a revised Appendix D, showing an amended plan of the beach huts, which were recommended for exclusion from the proposed registration.

(2) The Commons Registration Officer reported that the application had been made by Mr D Plumstead on 12 August 2010 under section 15 of the Commons Act 2006. The application had been reported to the Regulation Committee Member Panel meeting on 17 July 2012 where the decision had been taken to refer the case to a non-statutory public inquiry in order to clarify the issues.

(3) The Commons Registration Officer went on to explain that the reason for reference to a non-statutory public inquiry had been that Shepway DC as the landowner had objected on the grounds that the land in question was a working fishermen's beach. The District Council had, however, decided not to attend the public inquiry, which had nevertheless needed to be held in order to establish the facts of the case. The Inspector had subsequently produced a report on her findings in February 2014.

(4) The Commons Registration Officer briefly summarised the Inspector's findings. She had been satisfied that use of the land had been "as of right" because, although the landowner had erected signs, their content had not been sufficient to cause informal recreational use to become contentious. Nor was there any evidence that the landowner had either expressly or implicitly given permission for such use. The Inspector had also considered that there was sufficient evidence to demonstrate that the land in question had been used for the purposes of lawful sports and pastimes. She had also concluded that the application land had been used extensively used by inhabitants of the locality of South Ward in Hythe throughout the relevant period (up to May 2010) for informal recreation. The application had been made in August 2010, well within the two-year period of grace. The Inspector's conclusion had therefore been that the majority of the land should be registered.

(5) The Inspector had, however, exempted the fishermen's huts and winch casings as these had been uses for purposes which were not compatible with recreational use. As a consequence, she had recommended that no part of the application site upon which a hut or winch casing had stood at any time during the twenty year period to May 2010 would qualify for registration.

(6) The Commons Registration Officer concluded her presentation by saying that she had carefully considered the Inspector's report and considered that all the necessary tests had been met in respect of the application land (except for the huts and winch casings). She therefore recommended accordingly.

(7) Mr D Plumstead (applicant) submitted a written rebuttal of a statement made by Mr Chambers on the Shepway DC Facebook page. He then thanked the Inspector and Commons Registration Officer for the immense trouble they had gone to in order to ensure that the right decision was made.

(8) On being put to the vote, the Panel voted 4 to 0 (Mr Manion having left the meeting) in favour of the recommendations of the Head of Regulatory Services.

(9) RESOLVED that for the reasons set out in the Inspector's report dated 21<sup>st</sup> February 2014, the applicant be informed that the application to register land known at Fisherman's Beach at Hythe has been accepted (with the exception of the fisherman's huts and winch casings) and that the land shown in the updated version of Appendix D to the report be registered as a new Village Green.

**6. Application to register land known as The Warren at Brabourne as a new Village Green**

*(Item 5)*

(1) The Commons Registration Officer briefly reported that Brabourne PC had submitted an application for a voluntary registration of the site under section 15 (8) of the Commons Act 2006. She added that the land in question was wholly owned by the applicant and that there were no other leaseholders or owners of relevant charges. There had also been no objections to the registration. Consequently, all the necessary criteria for voluntary registration of the land had been fulfilled.

(2) RESOLVED that the applicant be informed that the application to register the land known as The Warren at Brabourne Lees has been accepted and that the land subject to the application be formally registered as a Village Green.

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By: Head of Democratic Services  
To: Regulation Committee – 13 May 2014  
Subject: Home to School Transport Appeals update  
Classification: Unrestricted

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Summary: To provide Members with an overview on Home to School Transport appeal statistics for the period between 1 January 2014 to 20 April 2014 and a brief comparison with transport appeals statistics in 2010 to 2013.

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### **1. Home to School Transport Appeal Statistics 2014**

(1.1) For the period between 1 January 2014 to 30 April 2014 a total of 28 individual appeals were considered by Member Transport Appeal Panels of this Committee. 57% 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 2013.

(1.2) There are a further 18 appeals that are still waiting to be heard.

### **2. Transport Appeal Statistics – 2013**

(2.1) For the period between 1 January 2013 to 31 December 2013 a total of 109 appeals were considered by Transport Appeal Panels. 30% 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.

<b>3. Recommendation</b> Members are asked to note this report.
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Andy Ballard  
Senior Democratic Services Officer  
Tel No: (01622) 694297, e-mail: [andrew.ballard@kent.gov.uk](mailto:andrew.ballard@kent.gov.uk)

**TABLE 1  
HOME TO SCHOOL  
TRANSPORT APPEALS -1 JANUARY – 30 April 2014**

<b>Month</b>	<b>Upheld</b>	<b>Not Upheld</b>	<b>Total</b>	<b>% Upheld</b>
January	8	2	10	80%
February	3	2	5	60%
March	3	4	7	43%
April	2	4	6	33%
<b>TOTALS</b>	<b>16</b>	<b>12</b>	<b>28</b>	<b>57%</b>

**TABLE 2  
HOME TO SCHOOL TRANSPORT APPEALS - 2010-2013**

<b>Year</b>	<b>Upheld</b>	<b>Not Upheld</b>	<b>Total</b>	<b>% Upheld</b>
2010	38	46	84	45%
2011	23	43	66	35%
2012	26	80	106	24%
2013	33	76	109	30%

## Update from the Commons Registration Team

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A report by the Head of Regulatory Services to Kent County Council's Regulation Committee on Tuesday 13<sup>th</sup> May 2014.

### Recommendation:

**I recommend that Members consider this report and note its content**

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### 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. So far this year, 6 applications to register new Village Greens have been considered at two separate Regulation Committee Member Panel meetings held in March and April. These resulted in the registration of four new Village Greens across the county.
3. Three Public Inquiries are due to take place this year in relation to applications at Canterbury (details TBC), Goudhurst (commencing on 2<sup>nd</sup> June 2014) and Ripple (commencing 9<sup>th</sup> June 2014).
4. Two applications remain 'on hold' pending the decision of the Supreme Court in the case of *Barkas v North Yorkshire County Council*. Members will recall that the *Barkas* case is concerned with the issue of land held by a local authority for a specified purpose and its effect on whether any subsequent recreational use of that land is 'as of right'. The matter was heard on 2<sup>nd</sup> and 3<sup>rd</sup> April this year and a decision is expected in the summer.
5. There are currently 11 applications awaiting determination, of which 10 are currently under investigation. Although the actual number of Village Green applications received by the County Council has been greatly reduced over recent years, Officers are now increasingly receiving enquiries regarding the submission of applications in response to the new system of 'landowner statements' (introduced late last year). This system enables a landowner to deposit a statement with the County Council which has the effect of bringing any 'as of right' use of his land to an end. The purpose of the statement is to safeguard the land against any future applications to record public rights of access (by bringing 'as of right' use to an end), but once the statement has been made local residents still have one year within which to submit a Village Green application. As the system of 'landowner statements' requires a notice to be advertised on site, thereby bringing the landowner's challenge to use to the attention of members of the public, it may be that this will result in a slight increase of applications being made.

### Recommendation

6. I RECOMMEND that Members consider this report and note its content

### Background documents:

Appendix A – Schedule of Village Green applications

### Contact Officer:

Melanie McNeir

Public Rights of Way and Commons Registration Officer

Tel: 01622 221628

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

**Applications resolved by the Regulation Committee (Member Panel)  
since last report (28<sup>th</sup> January 2014)**

Description	Parish	Member(s)	Outcome
Seaton Meadow	Wickhambreaux	Mr. M. Northey	Rejected
Land known as Fisherman's Beach	Hythe	Mr. M. Whybrow	Accepted and registered as Village Green
Land at Montefiore Woodland	Ramsgate	Mr. A. Terry Ms. Z. Wiltshire	Accepted and registered as Village Green
Land at The List	Littlebourne	Mr. M. Northey	Rejected
Land at Masefield Way	Tonbridge	Mr. R. Long Mr. C. Smith	Accepted and registered as Village Green
Land at The Warren	Brabourne	Mr. A. Wickham	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 <sup>nd</sup> June 2014 at The Vine
Land at Coldblow Woods	Ripple	Mr. S. Manion	Commences Monday 9 <sup>th</sup> June 2014 at Deal Town Hall

**Outstanding applications to be resolved**

Description	Parish	Member(s)	Status
The Downs	Herne Bay	Mr. N. Bond Mr. B. MacDowall	On hold*
The Cricket Field	Marden	Mrs. P. Stockell	Panel meeting TBA
Land at Ursuline Drive	Westgate	Mr. J. Elenor	Panel meeting TBA
Kingsmead Recreation Ground	Canterbury	Mr. G. Gibbens	On hold*
Whitstable Beach	Whitstable	Mr. M. Harrison Mr. M. Dance	Under investigation
Recreation Ground	Hildenborough	Mrs. V. Dagger	Under investigation
Land at West Wood	Hildenborough	Mrs. V. Dagger	Under investigation
Land known as the Old Putting Green	Ramsgate	Mr. A. Terry Ms. Z. Wiltshire	Awaiting investigation

\*At the Regulation Committee Member Panel meeting on 26<sup>th</sup> 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 Downs application involves similar legal issues and this matter is also on hold pending the outcome of the *Barkas* case.

## Update on Planning Enforcement Issues

## Item 6

Report by Head of Planning Applications Group to the Regulation Committee on 13<sup>th</sup> May 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 the 28<sup>th</sup> January 2014 Regulation Committee Meeting.
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

#### *Structural Changes*

5. Since the last Meeting, the Planning Applications Group, along with others has joined the newly formed Environment, Planning & Enforcement Division, within the Growth, Environment & Transport Directorate. The Minerals & Waste Planning Policy Team has also joined the Group.

### *Office Move*

6. The Planning Applications part of the enlarged Group has recently moved to a temporary location within Invicta House, pending a new and permanent location being made ready, within a smaller footprint. There has been a need to drastically reduce the volume of files and information that we carry in order to fit the space. As part of this transition, a major commitment has had to be made to electronically scan the vast majority of paper planning enforcement files (alongside the planning application files). These include major case, court and Public Inquiry documents. The task has been immense and time-consuming, involving an unavoidable (but contained) impact on current casework. The exercise has had to be carried out meticulously, given the evidential status of many of the documents and a statutory need to respect the confidentiality of the information being handled and to protect our sources.

### *Surge in Cases*

7. I reported to the previous Meeting that in the lead-up to the Committee there had been a marked surge in serious planning enforcement cases. Indeed, a number of confidential reports were required. It was speculated that the sudden influx in cases was largely reflective of the upturn in the economy. The generation of surplus development spoil always holds the potential for a percentage of such material to go astray.
8. I am pleased to inform Members that this surge in work has been absorbed and a return made to a more normal level of casework. It will be noticed for instance that there has been no need to produce confidential reports for this Meeting.

### *Prevention of Potential Planning Breaches*

9. It has been drawn to my attention that the operating hours over Bank Holidays at the Studd Hill, Herne Bay Householders Recycling site has the potential to generate flytipping problems, particularly in relation to green waste. As a result of this concern, I have checked the opening hours and can advise that there is planning permission to open on Sundays and Bank Holidays. However, the decision on whether to do so or not is a matter for KCC Waste Management. I am not aware of a particular flytipping problem at this site and in any event, there is a requirement at all such facilities for swift action to be taken to curb and control activity of this type.

### *Co-ordinating and Advisory Role*

10. Alongside the Group's main workload, I am also continuing to offer advice on a number of district enforcement cases. I reported to the last Meeting that 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. Virtual teams are ready to be deployed at short notice on most of the more difficult planning enforcement cases.
11. The Larkey Wood, Chartham case (Schedule 1, No.1); Nt Rix Scaffolding Ltd, Dover (Schedule 1, No.4); Foxdene, Stockbury (Schedule 1, No.6); Orchard Place, Sutton Valance (Schedule 1, No.7); Little Neverend Farm, Ulcombe (Schedule 1, No. 8); Willow

Farm, Ospringe (Schedule 1, No.12) and Top Bungalow, Cranbrook (Schedule 1, No.13) 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, established by 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 still 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.

### *Case focus*

12. Since the last Meeting resources have been focussed on 3 sites where formal enforcement action has been taken, 3 cases where investigations are underway and a further 4 cases that have been satisfactorily progressed.

### **Achievements / Successes [including measurable progress on sites]**

13. Nt Rix Scaffolding Ltd, Astley Avenue, Dover (Schedule 1, No.4), is now in compliance and the land has been restored.
14. Planning permission has been granted for a new waste management facility at Units 6, 13 & 14 Detling Airfield (Schedule 1, No. 5). The original and alleged site contraventions have been resolved by the current operator, who now intends to implement the planning permission with modern appointed buildings and related safeguarding measures.

### **New Cases, especially those requiring action / Member support**

15. Four new County Matter cases have arisen since the last Meeting. They include: Little Neverend Farm, Ulcombe (Schedule 1, No.8); Willow Farm & Equestrian Centre, Ospringe (Schedule 1, No. 12) and renewed issues at Top Bungalow, Cranbrook (Schedule 1, No.13) and Sheerness Recycling, Tonbridge (Schedule 2, No.2).

### **Significant on-going cases**

16. The most significant cases at the moment are at Larkey Wood, Chartham (Schedule 1, No.1) and the related site at Thirwell Farm, Hernehill (Schedule 1, No.11). Each is subject to proceedings, which should bring new landowners onto the scene, capable and willing to carry out the required level of restoration at both sites.

### **Other cases / issues of interest and requests from Members**

17. No cases identified on this occasion.

### **Monitoring**

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

18. 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 10 chargeable monitoring visits to mineral and waste sites, yielding a related income to the Group.

#### **Resolved or mainly resolved cases requiring monitoring**

19. 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.
20. 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 14 of this report.

### **Conclusion**

21. The Planning Applications Group is now within a new Division and Directorate, following the recent structural changes to the County Council. Integration has also taken place with the Minerals & Waste Planning Policy Team. Office re-location has spurred the need to move as (far as possible) from paper to electronic record-keeping within the planning enforcement field. The size of the task has inevitably meant some diversion of effort from main casework but is now largely complete. Notwithstanding this business pressure the surge in cases reported to the last Meeting, has either been absorbed into the main work stream or passed to the relevant district authority, the Environment Agency, or both. The Planning Enforcement Team is continuing with its co-ordination and advisory role, offering detailed assistance in the main, to our district counterparts.

### **Recommendation**

22. I RECOMMEND that MEMBERS NOTE & ENDORSE:
- (i) the actions taken or contemplated on the respective cases set out in paragraphs 5 to 20 above and those contained within Schedules / Appendices 1, 2 and 3.



Case Officer: Robin Gregory

01622 221067

Background Documents: see heading

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**Active Enforcement Cases**

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

Page 35

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p><b>Canterbury</b></p> <p>DC3/CA/03/COMP/OO53 Larkey Wood Farm, Chartham</p> <p>(Member: John Simmonds)</p>	<p>Apparent unauthorised waste-related activities on site.</p>	<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>Further alleged breaches demand full restoration.</p> <p>At the same time, the site is being repossessed by the mortgage company. The commitment to restore the site will transfer with the land. Specialist teams will then be deployed (at private expense) to clear the site and return the land to its original state.</p>	<p>Site clearance and restoration can only begin in earnest when the land is repossessed. The procedure is lengthy and complex but now well advanced. Whilst the land is in transition, the regulatory team are ensuring that any site activities are held in check.</p> <p>A case conference involving all relevant parties can be convened at short-notice, to secure the required restoration. I would therefore <b>seek Members support for the reserving of injunctive action, pending repossession</b> of the land.</p>

	<u>Site &amp; 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.	An application for a certificate of lawful use, for a skip business and related waste storage, has been withdrawn. It was clear that lawful use did not apply.  No amenity complaints have been received regarding this site. The EA are also available to control the use.	<b>Members continued support is sought for enforcement action to be held in reserve</b> , pending relocation of the use. That in turn is still being actively pursued, potentially including a site already with planning permission for the use.  I <b>propose</b> to continue monitoring the site but for the time-being <b>remove</b> the case from these schedules.
3	<b>Dartford</b>  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 planning application has been received. At the request of officers further supporting information is being prepared to allow a full and proper planning assessment to be made.	I would seek <b>Members continued support for the reserving of enforcement action</b> (i.e. an Enforcement Notice / injunction), pending determination of the application, when the situation may be reviewed.

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
4	<p style="text-align: center;"><b>Dover</b></p> <p>KCC/DO/COMP/2013 Nt Rix Scaffolding Ltd, Astley Avenue, Dover</p> <p>(Members: Pam Brivio &amp; Gordon Cowan)</p>	<p>Importation and depositing of substantial volumes of hardcore in the open countryside.</p> <p>The material was traced to the new demolition arm of Nt Rix Scaffolding.</p>	To exact compliance and planning control.	A round-table meeting has been held between the operator, his agent and officers from KCC, Dover DC and the EA. This required future compliance but was also used to discuss re-location and expansion plans.	<p>Full compliance has now been achieved and the damaged land has been satisfactorily restored.</p> <p>I therefore intend to remove <b>from these Schedules</b>.</p>
5	<p style="text-align: center;"><b>Maidstone</b></p> <p>MA/13/2191 &amp; KCC/PRE/MA/0197/2013</p> <p>Units 6, 13 &amp; 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 largely brought the operation back to compliance.</p>	<p>Planning permission was recently granted at the 9<sup>th</sup> April 2014 Planning Applications Committee to consolidate the use of the extended site and to enclose the main waste activities, within two new buildings. This represents a significant commitment to the site and level of investment. Higher recycling rates would be possible, in the context of modern environmental and amenity controls.</p>	<p>I view the current turn of events in a positive light. The improvements on site and the promise of the recent planning permission, give me confidence in the site's future and likely compliance with planning controls. In this context, I intend to <b>remove from the Schedules</b> but continue to <b>monitor</b> the site.</p>

	<u>Site &amp; 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 claiming lawful use status from Maidstone BC (MBC). This includes the seeking of permission for related site engineering works. Both applications were submitted to the Borough Council in early 2012.	The applications remain with MBC to determine. I have nevertheless offered advice and assistance.	A mixed use of this type falls to MBC to deal with, in line with our Enforcement Protocol with them and by virtue of case law.  I shall now <b>remove from these Schedules</b> but inform Members of the outcome of the applications. .
7	KCC/MA/COMP/2013 Orchard Place, Heniker Lane, Sutton Valance  (Members: Eric Hotson / at the boundary with Jenny Whittle)	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 and a meeting with the landowner have confirmed a mixed use site, centring primarily on agriculture. There are polytunnels, a farm shop, agricultural and groundwork contracting, plant hire, a commercial fishing lake, office and residential uses. Small scale crushing and screening is used to occasionally generate materials and soils for the growing of produce and maintenance of existing hard surfaces.	The site is a multi-use District Matter. Material processing is integral to the overall enterprise. There is no apparent County Council jurisdiction, which I have confirmed both to MBC and the owner / occupier.  In the circumstances, I propose to <b>remove from these Schedules</b> but maintain a watching brief.

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
8	<p style="text-align: center;"><b>Shepway</b></p> <p>Little Neverend Farm Pye Corner, Ulcombe  (Member: Jenny Whittle)</p>	<p>Allegations of an unauthorised waste use were reported by Maidstone BC (MBC) in March 2014.</p>	<p>To investigate and see if there is a clear and discrete County Council activity to pursue, in addition to MBC's long-term handling of the case.</p> <p>A site visit and meeting have taken place with the site operator / resident.</p>	<p>The primary use of the site is for commercial landscaping, supported by the local hire of small-scale plant, machinery and mini-skips. Other uses in the mix include haulage, commercial logging and storage, baling and bulking of farm-related plastic materials as part of a nationally run scheme. No recycling actually takes place on the site.</p>	<p>This integrated mix of uses falls to MBC to regulate. I have confirmed as such to the Borough Council and the owner / occupier.</p> <p>I shall now <b>remove</b> this case <b>from the Schedules</b> but maintain a watching brief.</p>

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
9	<p style="text-align: center;"><b>Swale</b></p> <p>KCC/SW/0136/12 Sheerness Recycling Ltd Unit 34 Klondyke Ind Est Queenborough</p> <p>(Member: Angela Harrison)</p>	Importation of construction and demolition spoil, with mechanical processing.	<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 been received but since withdrawn, alongside the Lawful Use application.</p> <p>Circumstances have changed at the site. The land is apparently no longer available to the operator, given a potential alternative development. Coincidentally, the Environment Agency (EA) has required closure of the site in the absence of an Environmental Permit. That remains the position.</p>	<p>I am content for the EA to maintain the enforcement lead. However, I would seek <b>Members support on a contingency basis</b> for the <b>servings of an Enforcement Notice</b> and / or the <b>seeking of an injunction(s)</b>, to respond to any potential future breaches.</p> <p>I shall <b>remove from the Schedules</b> for now but keep a monitoring presence.</p>



	<u>Site &amp; 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.	To arrest the alleged breaches and return the site to its lawful wharf-related use.  A County Council confirmed Enforcement Notice (EN) requires restoration of the site. With Members endorsement that has turned to 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.	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.  A contracting firm and project manager have been employed and size reduction tests on the concrete beams have been completed.	The scheme to remove the large stockpile of lintels and to incorporate the material into the land is still awaited. I am now pressing for its urgent submission, as the details have to be vetted before the works can commence. There have been drainage complications but that should not be allowed to delay matters. Every chance needs to be given for the works to hit the construction window, this year.  All elements are in place but <b>urgency needs to be injected into finalising the detail.</b> I shall impress this upon the landowner. <b>The weight of Member support would greatly assist</b> in finally resolving this matter.

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
11	DC3/SW/2013 Thirwell Farm, Drove Lane, Hernhill  (Member: Andrew Bowles)	<p>Unauthorised importation of land-raising materials to the site, causing damage to the land and to its landscape setting.</p> <p>The site has operated in tandem with Larkey Wood, Chartham (see item 1 of this Schedule).</p>	<p>Swale BC (SBC) 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>Apart from repossession proceedings at the related Larkey Wood site, the operator has also been declared bankrupt. The official receiver is therefore investigating the possible seizure of the Thirwell site. I am trying to ascertain how far this has reached, without infringing on live confidential matters.</p> <p>The two sites are closely linked, which tends to complicate matters.</p>	<p>Notwithstanding the difficulties, there remains the prospect of full restoration at private cost.</p> <p>In the meanwhile, <b>Members' support</b> is still sought, as a contingency <b>for the taking of enforcement action</b> (should that be required), to include the serving of an Enforcement Notice; underwritten as required, by a County / High Court Injunction(s). <b>I shall keep Members informed.</b></p>
12	Willow Farm & Equestrian Centre, Hansletts Lane, Ospringe, Faversham ME13 0RS.  (Member: Andrew Bowles)	<p>Perimeter earth bunding, in a line of about 50 metres in length, north of the M2 and is in height between 1.5 and 2 metres.</p>	<p>To investigate this apparent planning breach and decide jurisdiction with Swale Borough Council (SBC).</p> <p>Investigations are now complete.</p>	<p>The main uses on the site are equestrian, agriculture, residential, retail and leisure; all of which would fall to Swale Borough Council (SBC) to regulate. Indeed they have been contacted already by the owner. The bunding material has been moved internally, which only serves to reinforce the point.</p>	<p>The development is apparently intrinsic to improvements on the land. Planning permission is required from SBC and an application is currently in hand.</p> <p>As the scheme falls <b>outside of the County Council's remit</b> I shall now <b>remove from these Schedules.</b></p>

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
13	<p><b>Tunbridge Wells</b></p> <p>Top Bungalow, Frieszley Lane, Cranbrook.</p> <p>(Member: Seán Holden)</p>	Importation of builders' demolition spoil and alleged burying and burning on site, with associated heavy machinery noise.	To co-ordinate with the established efforts of Tunbridge Wells BC's Planning Enforcement and Environmental Health teams and the Environment Agency.	<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 have continued to advise and liaise recently with those that do.</p> <p>I shall otherwise <b>remove</b> the case <b>from these Schedules</b>.</p>

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

***Appendix 2***

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	<b><u>Site &amp; Case Reference</u></b>	<b><u>Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
1	<p><b>Dartford</b></p> <p>KCC/DA/COMP/2013 FM Conway Ltd, Rochester Way, Dartford  (Member: Jan Ozog)</p>	<p>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.</p>	<p>Advise the operators and require immediate and progressive reduction in stockpile heights.</p>	<p>The operators have responded, reducing the level of material and confirming by photograph.</p>	<p>Since the earlier alleged breach, I can confirm from monitoring that there has been <b>no resumption</b> and I shall therefore <b>remove from these Schedules</b>.</p>
2	<p><b>Tonbridge &amp; Malling</b></p> <p>Sheerness Recycling Sanderson Way, Tonbridge  (Members: Richard Long TD &amp; Christopher Smith)</p>	<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 &amp; topsoil production.</p>	<p>To monitor and ensure that any corrective measures that may be needed are put into place.</p>	<p>Site operational practices and safeguards have been reviewed, with a focussed effort by the operator in reducing down any surplus material on site.</p>	<p>Since my first intervention, stockpile heights have again strayed upwards. However, I am applying monitoring pressure to ensure that the site returns to compliance. <b>I shall keep Members informed.</b></p>

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

**Appendix 3**

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	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p><b>Canterbury</b></p> <p>Greenbridge Park Gypsy &amp; 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>Advice has been taken on a suitable landscaping scheme, which presents a sustainable and long-term solution to the problem. A number of options have been explored (e.g. fencing, a concrete structure, earth bunding and related planting). Each of these is in turn being discussed with the Environment Agency (given their remit along the riverside, including flood protection). I <b>shall inform Members</b> on the solution adopted and the measure of success.</p>

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
2	<p><b>Sevenoaks</b></p> <p>Barnfield Park, Gypsy &amp; Travellers Site, Ash Road, Sevenoaks.</p> <p>(Members: David Brazier &amp; 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. I have received no further complaints of tipping in the main Paddock area. A plan for removing the waste in a staged way is now required. The site access issue will need separate attention.</p> <p>I propose with <b>Members’ support to task KCC Gypsy &amp; Travellers section</b> with producing a staged <b>site recovery plan</b> for the <b>Paddock</b> and <b>site access protection measures</b>, in time for the 3<sup>rd</sup> September 2014 Regulation Committee Meeting.</p>