

REGULATION COMMITTEE

Tuesday, 1st September, 2015

10.00 am

Council Chamber, Sessions House, County Hall,
Maidstone





AGENDA

REGULATION COMMITTEE

Tuesday, 1st September, 2015, at 10.00 am Ask for: **Andrew Tait**
Council Chamber, Sessions House, County Telephone: **03000 416749**
Hall, Maidstone

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

Membership (17)

- Conservative (9): Mr A H T Bowles (Chairman), Mr S C Manion (Vice-Chairman),
Mrs V J Dagger, Mr J A Davies, Mr T Gates, Mr P J Homewood,
Mr J M Ozog, Mr C Simkins and Mr J N Wedgbury
- UKIP (3) Mr H Birkby, Mr L Burgess 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
To note that Mr A D Crowther has replaced Mr M Heale as a Member of the Committee
2. Substitutes
3. Declarations of Interests by Members in items on the Agenda for this meeting.
4. Minutes (Pages 5 - 18)
 - (a) Committee: 15 May 2015
16 July 2015
 - (b) Member Panel: 19 May 2015
5. Dates of meetings in 2016
Tuesday, 26 January 2016
Tuesday, 10 May 2016

Tuesday, 13 September 2016

All meetings to commence at 10.00 am

6. Home to School Transport Update (Pages 19 - 20)
7. Update on Rights of Way and Village Green Issues (Pages 21 - 24)
8. Update on Planning Enforcement issues (Pages 25 - 28)
9. Other Items which the Chairman decides are Urgent
10. Motion to exclude the public

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

EXEMPT ITEMS

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

11. Update on Planning Enforcement issues (Pages 29 - 38)
12. Update on Planning Enforcement issues at Larkey Wood, Chartham (Pages 39 - 44)
13. Update on Planning Enforcement issues at Thirwell Farm, Hernhill (Pages 45 - 50)
14. Update on Planning Enforcement issues at Pit Stop Cafe, Dargate (Pages 51 - 56)

Peter Sass
Head of Democratic Services
03000 416647

Friday, 21 August 2015

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 Friday, 15 May 2015.

PRESENT: Mr M J Harrison (Chairman) Mr S C Manion (Vice-Chairman)
Mr M Baldock, Mr H Birkby, Mr A H T Bowles, Mr C W Caller, Mr G Cowan,
Mr A D Crowther, Mrs V J Dagger, Mr T Gates, Mr P M Harman, Mr T A Maddison,
Mr J M Ozog, Mrs E D Rowbotham, Mr C Simkins and Mr J N Wedgbury

IN ATTENDANCE: Mr S Bagshaw (Head of Fair Access), 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 (Team Leader - Planning Enforcement), Ms J Hamid (Enforcement Administration Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

9. Minutes (Item 3)

RESOLVED that the Minutes of the meetings of the Committee held on 27 January 2015, the Mental Health Guardianship Sub-Committee held on 28 January 2015 and the Member Panel held on 3 March 2015 are correctly recorded and that they be signed by the Chairman.

10. Home to Schools Transport Update (Item 4)

(1) The Democratic Services Manager provided an overview of Home to School Transport appeal statistics for the period between 1 January 2015 and 30 April 2015, giving a brief comparison with transport appeal statistics in the years 2010 to 2014. He explained that one of the reasons for the recent increase in upheld appeals was that there had been a number of reviews of previously-upheld appeals, and that a high proportion of these tended to be confirmed.

(2) RESOLVED that the report be noted.

11. Update from the Commons Registration Team (Item 5)

(1) The Public Rights of Way and Commons Registration Officer reported on progress with Village Green applications. She explained the implications of the Supreme Court's decision in respect of the Newhaven West Beach Village Green application, particularly as it related to the issue of "statutory incompatibility".

(2) RESOLVED that the report be noted and that the Commons Registration Team be congratulated for reducing the number of outstanding cases.

12. Update on Planning Enforcement Issues
(Item 6)

(1) The Head of Planning Applications Group gave an overview of planning enforcement matters since the last meeting of the Committee. She explained that a recent High Court case had confirmed that planning enforcement responsibility in “mixed use” cases needed to be undertaken at District level. It was intended to produce good practice guides in order to assist joint working between the various partners in this area of work.

(2) RESOLVED that the actions taken or contemplated in the report be endorsed.

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.)

13. Update on Planning Enforcement issues *(Item 9)*

(1) The Team Leader – Planning Enforcement gave an update on unauthorised planning enforcement matters, setting out the actions taken or contemplated in respect of a number of sites. These were Mount Pleasant Farm, Yorkletts, Whitstable; Court Wood House, Longfield; Nt Rix Scaffolding Ltd, Dover; Plant Hire Solutions Camp Site, West Hougham; DWP Recycling, Halstead; Woodgers Wharf, Upchurch; Pit Stop Café, Dargate; and Top Bungalow, Cranbrook.

(2) During discussion of this item, the Team Leader was asked to give consideration to the possibility of meeting respective Local Members at Nt Rix Scaffolding Ltd, Dover and Woodgers Wharf, Upchurch.

(3) During discussion of this item, the Committee expressed its concern over the alleged uncontrolled importation of materials and high perimeter earth mounding at land adjoining Pit Stop Café in Dargate. It therefore agreed the course of action set out in (4) (b) below.

(4) RESOLVED that:-

- (a) endorsement be given to the enforcement strategy outlined in paragraphs 3 to 9 and Appendix 1 of the report; and
- (b) the Chairman of the Regulation Committee be requested to write to the Environment Agency and the Leader and Chief Executive of Swale Borough Council to draw attention to the urgency of resolving the unauthorised activities at land adjoining Pit Stop Café, Dargate, Faversham and to the need for the regulatory parties to work together (within their powers) to secure the cessation of unauthorised activities at the site and appropriate restoration. This correspondence will be shared with Hernhill Parish Council and the local press.

14. Update on Planning Enforcement issues at Larkey Wood, Chartham *(Item 10)*

(1) The Team Leader – Planning Enforcement reported on developments at the Larkey Wood Farm site in Chartham and set out the enforcement strategy being followed.

(2) In discussion of this item, a number of Members expressed concern that the proposed housing for restoration scheme might be viewed as the new landowner

benefitting from an unfortunate site history and earlier unauthorised actions. It was agreed that this outcome should in no way be seen as a precedent for other cases.

(3) On being put to the vote, the enforcement strategy was endorsed by 13 votes to 1 with 1 abstention.

(4) RESOLVED that subject to (2) above, endorsement be given to the enforcement strategy outlined in paragraphs 6 to 16 of the report.

15. Update on Planning Enforcement Issues at Thirwell Farm, Hernhill
(Item 11)

(1) The Team Leader – Planning Enforcement reported on developments at Thirwell Farm in Hernhill. This set out the case history, recent actions and a package of proposed actions.

(2) RESOLVED that endorsement be given to the enforcement strategy outlined in paragraphs 4 to 11 of the report.

KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Thursday, 16 July 2015.

PRESENT: Mr S C Manion (Vice-Chairman in the Chair) Mr H Birkby, Mr N J Bond (Substitute for Mr M Heale), Mr A H T Bowles, Mr L Burgess, Mr C W Caller, Mr G Cowan, Mrs V J Dagger, Mr J A Davies, Mr T Gates, Mr P J Homewood, Mr T A Maddison, Mr J M Ozog, Mr C Simkins and Mr J N Wedgbury

IN ATTENDANCE: Mr P Sass (Head of Democratic Services)

UNRESTRICTED ITEMS

16. Membership
(Item 1)

The Committee noted the appointment of Mr P J Homewood, Mr H Birkby and Mr M Heale in place of Mr M J Harrison, Mr M Baldock and Mr A D Crowther.

17. Election of Chairman
(Item 3)

(1) Mr S C Manion moved, seconded by Mr T Gates that Mr A H T Bowles be elected Chairman of the Committee.

Motion carried.

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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, 19 May 2015.

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

ALSO PRESENT: Mrs T Dean, MBE

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

UNRESTRICTED ITEMS

4. Application to register land known as The Glebe at Goudhurst as a Village Green

(Item 3)

(1) 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 expressed his support for the application.

(2) 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. Objection had been received from the Landowner (Canterbury Diocesan Board of Finance). The Panel had considered the application in September 2013 and had referred the matter to a non-statutory Public Inquiry. The Inspector had produced a detailed report dated 25 September 2014.

(3) The Commons Registration Officer went on to summarise the Inspector's findings in respect of the tests that had to be met in order for registration to take place. The first of these was whether use had been "as of right."

(4) The Inspector had examined the landowner's contention that use of the land had been by force because two of the entrances had been created by users creating a hole in the hedge. The Inspector's conclusion on this point was that although this may well have been the original method of entry, those who had used it afterwards had done so without knowledge of the original damage and that the gaps were sufficiently wide for them to have continued to use these entry points without force.

(5) The Inspector had also considered whether use had been with permission. The landowner had contended that (as in the *Barkas* case) the land had been set aside for the purposes of public recreation and was therefore incapable of registration. The Inspector had concluded on this point that there had been no power conveyed by statute upon which the landowner was seeking to rely in this case (section 507A of the Education Act 1996) to allow local authorities to make playing

fields available other than to those receiving primary or secondary education. The *Barkas* case therefore did not apply in this instance.

(6) The Inspector had also considered another point raised by the landowner that the village fete had been held on the site every summer. This had involved people gaining admission by buying a programme. On one occasion, the Parish magazine had advertised the event as taking place “*by kind permission of the head teacher.*” The Inspector’s conclusion had been that the fete committee had been acting in the same way as any other local inhabitant and that (crucially) permission to hold the fete had not been sought from the landowner. It could not, therefore, be inferred that use had taken place through implied permission. Use of the land had consequently been “as of right” up to the fete in June 2011.

(7) The Commons Registration Officer then informed the Committee that the Inspector had concluded that there was a great deal of evidence to demonstrate that use of the land had been for the purposes of lawful sports and pastimes.

(8) The Inspector had considered the test of whether use had been by a significant number of inhabitants of a particular locality or neighbourhood within a locality. The applicant had relied on the parish of Goudhurst as the locality and the Inspector had agreed that this was correct. She had also agreed that the land had been in general use by the community throughout the period in question and that this use had increased after the construction of a gravel path along the northern and western edges of the site in 1998.

(9) The Inspector had also found that the date when use had ceased to be as of right was June 2011. The application had been made in November 2011, well within the two year period of grace which had applied at the time. Use of the land had taken place well in excess of the necessary twenty period.

(10) The Inspector’s overall conclusion had been that all of the necessary tests had been met. She had, however, recommended that it would be prudent to await the conclusion of the *Newhaven* case, as this would have a bearing on the question of “statutory incompatibility.” The reason for this was that the landowner held the land under powers contained in the “*Endowments and Glebe Measures 1976.*” The landowner contended that registration as a village green would prejudice the execution of the landowner’s duties under the Measures. Following the judgement of the Supreme Court, the Inspector had concluded that registration would not be incompatible with the landowner’s statutory duty as set out in the Measure because that duty was not dependent on the land being free from constraint to any potential future development.

(11) The Commons Registration Officer said in conclusion that she had carefully considered the Inspector’s findings and that she recommended that registration should take place.

(12) Mr E Bates (applicant) briefly expressed his gratitude to the many local residents who had formed a residents group in support of the application and given evidence at the Public Inquiry. He also wished to thank the Inspector and the Commons Registration Officer for their helpfulness and patience throughout the process.

(13) On being put to the vote, the recommendations of the Commons registration Officer were carried by 4 votes to 0.

(14) RESOLVED that for the reasons set out in the Inspector's reported dated 25 September 2014, that the applicant be informed that the application to register land known as Glebe Field at Goudhurst has been accepted and that the land subject to the application be registered as a Village Green.

5. Application to register land known as Whitstable Beach as a Village Green

(Item 4)

(1) The Chairman informed the Panel that he was the elected Member for Whitstable. He had not taken part in any debate or discussion on this item and was able to approach its determination with a completely open mind.

(2) The Commons Registration Officer began her presentation by saying that the application had been made by under section 15 of the Commons Registration Act 2006 by Mr P McNally on behalf of the Whitstable Beach Campaign.

(3) The Commons Registration Officer went on to say that the majority of the application site had been the subject of an application submitted in 1999 under the Commons Registration Act 1965. This application had been refused following a Public Inquiry on three grounds. Two of these grounds were no longer applicable because the land which had become available for use as a result of the sea defence works of 1988/89 had now been in existence for well over the necessary 20 year period; and because it was no longer necessary to be able to demonstrate that use had been *predominantly* by residents of the neighbourhood or locality.

(4) The Commons Registration Officer then said that the third reason for rejecting the original application had been that a letter from the landowner had been published in the local newspaper in 1993 stating that the Whitstable Oyster Fishery Company had "*always encouraged people to use the beach*" and that "*dog-owners are welcome to use the beach..*" The question as to whether this letter was relevant to the present application needed to be explored further.

(5) The Commons Registration Officer continued that the Whitstable Oyster Fishery Company had objected to the application on seven grounds which included that of statutory incompatibility. The Company had been created by statute. Its view was that unlimited access to the beach by local people would be incompatible with its statutory functions.

(6) A further objection had been received from Canterbury CC (which owned a small part of the land). The main grounds were that registration would impede its ability to undertake coastal protection works under section 4 of the Coast Protection Act 1949. The City Council was therefore relying on the argument of statutory incompatibility as established in the *Newhaven* case.

(7) The Commons Registration Officer then turned to the legal tests. The first of these was whether use of the site had been "as of right." The applicant disputed the relevance of the April 1993 letter because it pre-dated the 20 year period of the

current application and because the original decision had, in any case, pre-dated the outcome of the *Beresford* case, which it had been held that permission had to be communicated and irrevocable. The landowner, on the other hand, contended that the effect of the April 1993 letter had continued after that date and that it would be wrong to consider that the permission conveyed within that letter had expired as soon as it was written. The Commons Registration Officer added that there were a number of issues in dispute, including whether the effect of the landowner's objection to the 1999 application had been sufficient to render any subsequent use as contentious (and therefore not as of right).

(8) The Commons Registration Officer then said that there was also a dispute between the landowner and the applicant over the identity of the locality. The applicant had originally named Whitstable as the locality but had then sought to amend the application so as to rely on four different neighbourhoods within this locality. The landowner considered that permitting the applicant to amend the application in this way was detrimental to the landowner. This view was disputed by the applicant.

(9) The Commons Registration Officer moved on to give greater detail of the objections relating to the "statutory incompatibility" question, which had been informed by the outcome of the *Newhaven* case. The landowner's position was that it wished to invest in new infrastructure, but that this would be rendered impossible if registration took place because they would be prevented from erecting the necessary small structures on the beach. The City Council contended that it had a statutory to carry out coastal protection work and that this would be rendered impossible due to the Victorian statutes that protected Village Greens, and would also leave the City Council vulnerable to any injunction taken out by a local person who objected to such works taking place.

(10) The applicant argued that there was no case of statutory incompatibility because the *Newhaven* case was not concerned with an outside body (such as Canterbury CC) which might wish to exercise statutory powers on the land in question.

(11) The Commons Registration Officer then turned to the overarching question as to whether the County Council was able to consider the application at all, given that it had already made a judgement on this matter. This was on the common law principle of *res judicata* (*a matter already judged*). The applicants did not believe that this principle applied in this case because the application differed from the original one; because "issue estoppel" (which prevented a litigant from raising an issue already raised in a previous case between the same parties) did not apply; and because the law itself had evolved considerably since the 1999 application.

(12) The Commons Registration Officer explained that she had sought advice from Counsel on this case, asking whether the application ought to be rejected without further consideration in the light of the landowner's comments. Counsel had replied that no "knockout blow" had been delivered to the application. She had shared this advice with both the applicants and the landowner who had each concurred with that advice.

(13) The Commons Registration Officer concluded her presentation by saying that, owing to the many areas of legal complexity and dispute, the most effective way of

determining the application was to refer the matter to a Public Inquiry in order to clarify the issues. She recommended accordingly.

(14) On being put to the vote, the recommendations of the Commons Registration were agreed by 4 votes to 0.

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

6. Application to register land at Langney Drive at Kingsnorth as a Village Green

(Item 5)

(1) The Commons Registration Officer briefly explained that the application had been made by Kingsnorth PC under section 15 of the Commons Registration Act 2014. During the consultation process, Ashford BC had provided evidence which demonstrated that the land in question was held in part under the provisions of section 10 of the Local Government Act 1976 (which gave power to a local authority to provide such recreational facilities as it saw fit); and in part under section 9 of the Open Spaces Act 1906 (which gave power to a local authority to acquire and maintain land as open space). The Borough Council had consequently contended that recreational use had taken place “by right” and not “as of right.”

(2) The Commons Registration Officer then said that Kingsnorth PC fully accepted Ashford BC’s position. She had informed the applicants that the County Council ought still to formally to determine the application. She therefore recommended that the application should be refused. This was agreed unanimously.

(3) RESOLVED that the applicant be informed that the application to register land at Langney Drive at Kingsnorth as a Village Green has not been accepted.

7. Application to register land known as Marlowe Road Green at Larkfield as a Village Green

(Item 6)

(1) The Commons Registration Officer briefly reported that the application for voluntary registration had been made under section 15 (8) of the Commons Act 2006 by East Malling and Larkfield PC. As such, the legal tests which needed to be met were far less onerous than was normally the case.

(2) The Commons Registration Officer confirmed that the necessary legal tests had been met in that a Land Registry search had confirmed that the application site was wholly owned by the Parish Council and that the qualifying locality was the civil parish of East Malling and Larkfield.

(3) Mrs T Dean was present for this item under Committee Procedure Rule 2.27. She said that the application was a very straight forward matter and that there had been no local objection to the principle of registration.

- (4) RESOLVED that the applicant be informed that the application to register the land known as Marlowe Road green at Larkfield has been accepted and that the land subject to the application be registered as a Town or Village Green.

8. Application to register land known as Coldblow Woods and Sports Ground at Ripple as a Village Green

(Item 7)

(1) Mr S C Manion informed the Panel that he was the Local Member for this application. He had taken no part in any discussions of the application except to advise the applicants who to contact within KCC. He was therefore able to approach the determination of the application with a completely fresh mind.

(2) The Commons Registration Officer began her presentation by saying that it had been made by Mr R Chatfield under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. 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.

(3) The Panel had considered this application on 26 November 2013 and had decided to refer it to a Public Inquiry in order to clarify the issues. The Public Inquiry had been held in June 2014. The Inspector had produced a report in October 2014. Following consideration of comments made by both parties, a revised, final version was issued on 30 March 2015.

(4) The Commons Registration Officer moved on to describe the Inspector's findings in respect of the individual tests for registration to take place. The first of these was whether use of the land had been "as of right". The main issue had been whether use had taken place by force. In this instance, the pertinent question was whether the use had been contentious. The Inspector had accepted the previous landowner's evidence that he had erected fencing in 1992 and had also put up notices, but had considered that these had been "feeble" and insufficient measures to deter walkers from recreating on the site. She had concluded, accordingly that this test had been met.

(5) The Commons Registration Officer turned to the question of whether use of the land had been for the purposes of lawful sports and pastimes. The Inspector had decided to discount evidence of fruit picking as it had not been possible to determine whether this activity had taken place for commercial purposes. She had nevertheless concluded that, generally speaking, lawful sports and pastimes had taken place to some degree.

(6) The Inspector had also considered whether the walking activities which had taken place constituted "rights of way type use" or lawful recreation. The distinction between the two was whether people were walking between two points or generally recreating. There were three paths on the site, two of which did not have specifically defined routes or destinations. The third path did, however, fulfil the "rights of way criteria." The Inspector had therefore discounted use of that particular path. Her overall conclusion was that the overall usage could be considered as qualifying use for Village Green registration.

(7) 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 found that the ecclesiastical parish of Walmer was a legally recognised administrative unit which was capable of registration.

(8) The Inspector had heard evidence that Travellers had gained unpermitted entry onto the site in 1999. They had left by August 2000 at the latest. During this period, a number of anti-social activities had taken place, including the burning of cars, raves, human waste and household rubbish. She had also considered contemporaneous newspaper articles which had described the site as a “rubbish tip” and had suggested that people were not going to the area at the time. As a result of the evidence given during the Public Inquiry, she had concluded that the number of people on site during this period (both in the area of the Traveller encampment and the woodland) had diminished to such an extent that it could not be considered that a significant number had recreated on the site.

(9) The Commons Registration Officer briefly explained that the application had been made in November 2012. Use had been challenged in August of that year in the northern section and in October 2012 in the southern section by prohibitive notices and the erection of barbed wire fencing. The Inspector had therefore agreed that the application had been made within the two year grace period as set out in the Commons Registration Act at that time.

(10) The Commons Registration Officer then said that the Inspector had concluded that the final test of whether use had taken place over a period of twenty years or more had not been met due to the interruption of use in 1999/2000 as described in (8) above. As a result, the application had failed, in her view to meet all the legal tests required for registration to be able to take place.

(11) The Commons Registration Officer concluded her presentation by saying that she had carefully considered the Inspector’s findings and that she had agreed with her conclusion that the tests had not been met. She therefore recommended accordingly.

(12) The Chairman asked whether, in the light of the recommendation, any of the parties wished to address the Panel.

(13) Mr Roger Chatfield (applicant) addressed the Panel. He said that the Inspector’s report had failed to acknowledge a number of witnesses. He accepted that New Age Travellers had used the site from 1996 to 2000 but added that, in his view, the period of disruption by other Travellers had only taken place for a few weeks in the summer of 1999. He then referred to paragraph 185 of the Inspector’s report in which the Inspector had inferred that a number of witnesses had not been on the site during the period of disruption. This had been disputed by one of the witnesses herself, who had said that she had been present during that time and had seen the burnt out cars, which had not interfered with her use of the area. All in all, there were 7 witnesses who had testified to their presence for recreational purposes during this period, although the Inspector had decided they had not been there.

(14) Morag Ellis QC spoke on behalf of the landowners. She said that the reasons for rejection of the application set out in paragraph 191 of the Inspector’s report referred to the meadow part of Site A where the encampment had been. The usage

that Mr Chatfield had described had taken place in the woodland area and had no bearing on this aspect of the findings because the Inspector had found other reasons for discounting the woodland itself. She then said that paragraph 200 of the Inspector's report clarified that the witnesses Mr Chatfield had referred to were all describing the New Age Travellers rather than the disruptive Travellers. She urged the Panel to accept the Inspector's findings as they had been reached following a great deal of detailed consideration of a great deal of evidence.

(15) Mr Chatfield asked the Panel to note that four witnesses had testified that the disruptive Travellers had only been at the site for a very short period and that this had not deterred them from using the site. This contrasted with the Inspector's assumption that the Travellers had been there for a much longer time.

(16) Mr Manion paid tribute to Mr Chatfield's work in preparing and promoting the application. He added that whilst it was clear that there had been a great deal of use of the site for recreational purposes, the Panel had to act according to the Law which required this use to be uninterrupted.

(17) On being put to the vote, the recommendations of the Commons Registration Officer were carried unanimously.

(18) RESOLVED that for the reasons set out in the Inspector's report dated 30 March 2015, the applicant be informed that the application to register land known as Coldblow Woods and Sports Ground at Ripple as a new Village Green has not been accepted.

By: Head of Democratic Services
To: Regulation Committee – 1 September 2015
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 2015 to 05 August 2015 and a brief comparison with transport appeals statistics from 2010 to 2014.

1. Home to School Transport Appeal Statistics 2015

(1.1) For the period between 1 January 2015 to 05 August 2015 a total of 47 individual appeals were considered by Member Transport Appeal Panels of this Committee 49% 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 2014.

(1.2) There are a further 31 appeals that are still waiting to be heard. These have been scheduled for September 2015.

2. Transport Appeal Statistics – 2014

(2.1) For the period between 1 January 2014 to 31 December 2014 a total of 148 appeals were considered by Transport Appeal Panels. 51% were upheld at least in part (e.g. time-limited assistance).

(2.2) It is interesting to note that in 2014 67% of the total number appeals were heard between August – 31 December 2014.

3. Recommendation Members are asked to note this report.

Andy Ballard
Senior Democratic Services Officer
Tel No: 03000 415809,e-mail: andrew.ballard@kent.gov.uk

TABLE 1
HOME TO SCHOOL
TRANSPORT APPEALS -1 JANUARY – 20 August 2015

Month	Upheld	Not Upheld	Total	% Upheld
January	2	6	8	25%
February	5	2	7	71%
March	4	7	11	36%
April	4	2	6	67%
July	2	4	6	33%
August (as of 20 th)	6	3	9	67%
TOTALS	23	24	47	49%

TABLE 2
HOME TO SCHOOL TRANSPORT APPEALS - 2010-2014

Year	Upheld	Not Upheld	Total	% Upheld
2010	38	46	84	45%
2011	23	43	66	35%
2012	26	80	106	24%
2013	33	76	109	30%
2014	76	72	148	51%

Update from the Public Rights of Way and Access Service – Definitive Map Team

A report by the Public Rights of Way and Access Service Manager to the Regulation Committee on Tuesday 1st September 2015.

Recommendations:

I recommend that:

- I. Members consider this report and note its content.
 - II. Members approve the continued operation of the Gating Orders at Henley Fields and Ashford Church Yard.
 - III.
-

Progress with Definitive Map Team applications

1. Members requested that a summary of the current position in respect of applications to amend the Definitive Map and Statement (DMS) be provided annually to the Regulation Committee. The summary will also provide detail about applications to amend the Town and Village Green register and other matters relating to the work of the Definitive Map Team.

2. Section 53 Applications

Any person may make an application under section 53 of the Wildlife & Countryside Act 1981 to the County Council, as Surveying Authority, for a public right of way to be added, upgraded or downgraded, or deleted. The County Council has a duty to investigate every application it receives. Investigation involves undertaking interviews with witnesses and landowners, documentary research and extensive consultations, amongst other things. It is our policy to deal with these applications in order of receipt except in circumstances, such as where the physical existence of the claimed route is threatened by development, when the case would be accelerated.

2.1 Between April 2014 and March 2015 nine applications were determined, nine Orders were made and four were confirmed.

There are currently 22 unallocated applications with a backlog of approximately 2½ years. Nine applications have been received so far this year.

The schedule of applications, which is updated quarterly, can be located on the County Council website at:

<http://www.kent.gov.uk/waste-planning-and-land/public-rights-of-way/correct-the-rights-of-way-map>

3. Statutory Deposits under section 31(6) of the Highways Act 1980 and/or section 15A(1) of the Commons Act 2006

3.1 This is a means by which a landowner can protect his land against any or further public rights of way from being recorded or a village green from being registered.

The implementation of The Growth & Infrastructure Act 2013, changed the process for lodging a deposit map and statement.

3.2 The main changes brought about by the 2013 Act are:

- a new application form;
- the inclusion of a statement which brings to an end any period where lawful sports and pastimes may have been enjoyed, and thus preventing any applications to register a town or village green on the land in question in the future;
- a statement of truth replacing the previous statutory declaration;
- the time between making further declarations has increased from within every 10 years to 20 years;
- the ability for County Councils to charge a fee for the service, which includes the making of a notice relating to the application and publicising of the notice on the County Council's website and at site.

41 applications were received between April 2014 and March 2015.

4. Applications to divert or extinguish public rights of way.

As part of its rights of way functions, the County Council also deals with applications from landowners to close or divert public rights of way using powers available to it under the Highways Act 1980. Public rights of way can be diverted for a range of reasons provided that it is 'expedient' (or necessary) to do so and that the proposed diversion is not substantially less convenient, or less enjoyable, for users. The test for closing (or 'extinguishing') a right of way is considerably narrower, and it generally only be possible to do this in cases where the right of way is considered to be 'unnecessary' or 'not needed for public use'.

4.1 On average, the County Council receives around 30 such applications each year, the vast majority seeking diversions of rights of way, and those applications are normally dealt with in order of receipt.

4.2 The County Council also deals with applications under the Town and Country Planning Act 1990 to close or divert public rights of way that are affected by development. This work is undertaken on behalf of some District Councils and also in respect of its own planning functions. So far this year, 8 such applications have been received.

4.3 A copy of the current schedule of applications is available on the County Council's website at:

<http://www.kent.gov.uk/waste-planning-and-land/public-rights-of-way/change-rights-of-way>

4.4 Currently, 33 diversion or closure applications are being processed. Due to the volume of applications received, there is a large backlog and there are currently a further 49 applications in the queue awaiting allocation to a member of the team. This means that there is a waiting time of approximately 2 years between the submission of an application and work commencing on it.

4.5 The backlogs for both applications to divert/ extinguish public rights of way and to amend the DMS reflect the complex and lengthy procedures to be followed. There is a strong correlation between the number of applications determined and the number of experienced officers available to undertake the work. Additionally there is no control available on the number of applications to amend the DMS that are received in any year. The number of applications can exceed the resource available to determine them. That said the backlogs are relatively stable and good progress is being made.

5. Applications to register Village Greens

Kent County Council is the 'Commons Registration Authority' responsible for holding the Registers of Commons Land and Village Greens. One of the key tasks arising from this responsibility is the determination of applications to register new Village Greens under section 15 of the Commons Act 2006.

5.1 As Members will be aware, Officers have been working hard to clear the once considerable backlog of such applications and, as a result of this, there are now just four applications outstanding:

- The Downs at Herne Bay;
- Chaucer Fields at the University of Kent at Canterbury;
- Whitstable Beach; and
- land at Cryalls Lane at Sittingbourne.

5.2 A Public Inquiry was held earlier this year in relation to the application at Chaucer Fields at Canterbury, and the Inspector's report has now been received. It is anticipated that the matter will be referred back to a Member Panel either later this year or early next year.

5.3 Arrangements are also currently under way to hold a Public Inquiry into the Whitstable Beach application (as approved at the Member Panel meeting on 19th May 2015). It is anticipated that this will be held, depending on the availability of the parties involved, early next year. Further details will be published nearer the time.

6. Gating Orders.

The Antisocial Behaviour, Crime and Policing Act 2014 has the effect of replacing Gating Orders with Public Spaces Protection Orders; the responsibility for making such orders falls to District and Borough Councils. The provisions in respect of gating orders are to be introduced by regulations; these have yet to be published.

6.1 Responsibility to review and extend the two existing gating orders in Kent (Henley Fields and Ashford Church Yard) will pass to Ashford Borough Council on introduction of the regulations.

6.2 The two existing gating orders in Kent have recently been reviewed. The orders continue to prove effective in preventing antisocial and criminal behaviour. The crime and antisocial behaviour statistics for both areas are included as **Appendix 1**. It is recommended that the orders continue in force until such time as responsibility for them passes to Ashford Borough Council.

7. Legislative Update

Deregulation Act 2015. The Deregulation Act received Royal Assent on the 26 March 2015. The Act introduces a considerable number of amendments to existing legislation relating to the recording and diversion of Public Rights of Way with the intention of simplifying the administration of this area of law. The changes to the existing legislation were detailed in last year's Update Report; provided as **Appendix 2**.

7.1 It is currently intended that the new provisions will be introduced through regulations in April 2016. The potential impacts on the Public Rights of Way and Access Service will be better understood when the regulations are published.

Recommendations.

8. I recommend that:

- I. Members consider this report and note its content.
- II. Members approve the continued operation of the Gating Orders at Henley Fields and Ashford Church Yard

Background documents:

Appendix 1: Crime and antisocial behaviour statistics for Henley Fields and Ashford Churchyard.

Appendix 2: Update for the Definitive Map Team 2nd September 2014.

Contact Officer

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Update on Planning Enforcement Issues

Item 8

Report by Head of Planning Applications Group to the Regulation Committee on 1st September 2015.

Summary: Update for Members on planning enforcement matters.

Recommendation: To endorse the actions taken or contemplated on respective cases.

Unrestricted

Introduction

1. This report provides an update on planning enforcement and monitoring work carried out by the Planning Applications Group since the 15th May 2015 Regulation Committee Meeting.
2. As part of the new reporting format, alleged unauthorised sites are now considered as exempt business. This helps to protect the content of any planning enforcement strategies being followed. Alleged breaches on permitted Minerals and Waste sites and on County Council Developments, along with this report will continue to be considered in open business.
3. The Schedule 1 list of sites covers summary details for Minerals and Waste sites and Schedule 2, County Council Developments. Both will appear in the open (white) papers. For ease of referencing and continuity, the unauthorised cases are now listed under Schedule 3 but their content taken as exempt items. For this Committee please note that there are no cases for the revised Schedules 1 and 2. However, a list of the cases covered in Schedule 3 is given in paragraph 7 of this report.

Report Format

4. The report otherwise follows its established format, equipping Members with the essential facts of a series of cases, varying in their degree of complexity and challenge. The following sub-divisions may also be called upon as required:
 - 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
5. 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 statutory chargeable monitoring for minerals development.
6. On this occasion, no alleged breaches on permitted sites have arisen (nor are there any existing cases that require reporting).
7. The list of cases covered under Schedule 3 attached to Item 9 (exempt report) of these papers includes:

Update on Planning Enforcement Issues

Item 8

- **Larkey Wood Farm**, Chartham
- **Mount Pleasant Farm**, Seasalter Lane Yorkletts, Whitstable.
- **Court Wood House**, New Barn Road, Longfield.
- **Nt Rix Scaffolding Ltd**, Astley Avenue, Dover.
- **Warren Court Farm**, Knockholt Road, Halstead.
- **Thirwell Farm**, Drove Lane Hernehill
- **Woodgers Wharf**, Horsham Lane, Upchurch.
- **'Pit Stop Café'** site, near Lychgate Services, Dargate
- **Top Bungalow**, Frieszley Lane, Cranbrook.

Meeting Enforcement Objectives

Themes

8. The main themes of this report continue to be, further integration of services, both inside and outside of the County Council and a flexible working style drawing on the resources of other regulators. Ever closer links are being formed internally between the Planning Enforcement Team and (among others): Public Rights of Way, Trading Standards, Waste Management and the Gypsy & Travellers Unit. External links include District Planning / Enforcement Officers, Environment Agency (EA) Teams (Waste Crime and Technical) and Kent Police.
9. Continuing efforts are being made to ensure that we maintain such links and synchronise actions with our enforcement partners. This pooling of staff, expertise and powers creates a strong united base as applied equally to smaller and larger cases. The public need to know that the most effective team is being put to the task. A common evidence base is also of use in seeking multiple prosecutions. Having all relevant regulatory bodies to hand is of assistance to the courts and usually increases the chances of a successful outcome and deterrent sentencing.
10. At a strategic level, the EA have hosted a further peer group meeting (at their Allington Offices) with our planning enforcement counterparts from Surrey and East and West Sussex. Understanding the cross-border nature of some alleged waste management contraventions has proved useful in tracking patterns of activity. Similar problems tend to occur within the Home Counties and successful enforcement techniques are already being shared. A presentation giving waste issue awareness training (principally for District Councils) is being produced among the County Officers, along with good practice guides. Reporting 'prompt' sheets are another idea, along with ways in our respective Counties to have early warning systems for construction spoil and soils going to unauthorised locations. Data bases and close-communication networks are important tools in the planning enforcement armoury.

Enforcement capacity

11. The networking of available resources across the public sector (including Government Offices such as the Inland Revenue and the Financial Services Authority (FSA)) offers greater enforcement capacity. Waste-related contraventions occupy us the most. Most of the sites form part of a more general and alleged criminal hub. They regularly attract the interest of the police as well as other regulatory bodies. Joining forces with all parties allows for a wider range of actions. The County Planning Enforcement team is playing an increasing role in promoting this level of co-ordination.

Achievements / Successes

12. There are two achievements of note to report since the last Meeting:

- **Woodgers Wharf, Upchurch** – the very substantial stockpile of concrete beams at the site has been reduced to rubble and formed into a ground level base. Residual steel reinforcing bars (unable to be sold as scrap) has been accepted on nature conservation grounds to be retained along two perimeter site boundaries. The bars have been shaped into site security barriers. Compliance has now been reached with KCC's confirmed Enforcement Notice on the site.
- **Top Bungalow, Cranbrook** – no further importation has taken place of building materials, small items of plant & machinery, wooden and so forth. A monitoring and supervision plan is still in action. KCC's and Tunbridge Wells Borough Council's Planning Enforcement Teams and the EA, has negotiated a pleasing turnaround on the site. The emphasis now is in confirming what has been done rather than dwelling on what still needs to be done. I am confident that if current progress continues, the land will be reinstated within a reasonable time frame and without the need for any formal action.

New Cases, especially those requiring action / Member support

13. There is one case to report:

- **New Tunstall CE Primary School, Tunstall, Sittingbourne** - Several alleged planning contraventions relating to the current construction of a new primary school on land at Tunstall, Sittingbourne, and the earlier planning application process, have been received in recent weeks. These complaints have been investigated but have not been pursued further, on the basis that they related to aspects either outside of planning control (in some cases covered by other Legislation) or are minor infringements where it would not be expedient to pursue enforcement action. The first line of defence against infringements of planning control is to seek remedy through negotiation with the landowner or developer, and officers in KCC Property Group are continuing to monitor the situation through their supervision of the contract for this construction project.

Significant on-going cases

14. I give advice and progress on a number of significant on-going cases in Schedule 3 of

Item 11 of these papers.

Other cases / issues of interest and requests from Members

15. No cases identified on this occasion.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

16. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits to some sites to formally monitor them under the statutory charging scheme. Since the last Regulation Committee, we have made a further 23 chargeable monitoring visits to mineral and waste sites, yielding a related income to the Group. We have also carried out a further non-chargeable visit.

Resolved or mainly resolved cases requiring monitoring

17. 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. This accounts for a significant and long-established pattern of high frequency site monitoring. Cases are routinely reviewed to check for compliance and where necessary are reported back to the Committee.

Conclusion

18. The Planning Enforcement Team is continuing to take a leading role in bringing together regulatory teams in the public interest. These occur internally and with the Kent Districts, other County Councils, the EA and the police. Trends and patterns of largely waste-related contraventions are being increasingly understood and acted upon in an intelligence-led way. The challenge mounted by multi-disciplinary teams is nearly always greater than the sum of its parts. It also helps to allow for an intelligent sharing of workloads and usually offers greater reassurance to the public in the fight against a wide range of environmental crime.

Recommendation

19. I RECOMMEND that MEMBERS NOTE & ENDORSE:

- (i) the actions taken or contemplated in this report.

Case Officers: Robin Gregory and Jasmine Hamid	03000 413380 / 413384
Background Documents: see heading.	

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