

## **REGULATION COMMITTEE**

**Tuesday, 3rd May, 2016**

**10.00 am**

Council Chamber, Sessions House, County Hall,  
Maidstone





## AGENDA

### REGULATION COMMITTEE

**Tuesday, 3rd May, 2016, 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. Substitutes
  2. Declarations of Interests by Members in items on the Agenda for this meeting.
  3. Minutes (Pages 5 - 40)
    - (a) Committee: 26 January 2016
    - (b) Mental Health Guardianship Sub-Committee: 26 January 2016 (To Note)
    - (c) Member Panel: 22 January 2016  
18 March 2016  
18 March 2016
  4. Update on Planning Enforcement Issues (Pages 41 - 44)
  5. Other Items which the Chairman decides are Urgent
  6. 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)*

7. Update on Planning Enforcement issues (Pages 45 - 52)
8. Update on Planning Enforcement issues at Pit-stop, Dargate (Pages 53 - 58)
9. Update on Planning Enforcement issues at Thirwell Farm, Hernhill (Pages 59 - 64)

### **EXEMPT ITEMS**

*(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)*

Peter Sass  
Head of Democratic Services  
03000 416647

**Friday, 22 April 2016**

*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

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### REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 26 January 2016.

PRESENT: Mr A H T Bowles (Chairman) Mr S C Manion (Vice-Chairman)  
Mr H Birkby, Mr L Burgess, Mr C W Caller, Mr G Cowan, Mr A D Crowther,  
Mrs V J Dagger, Mr J A Davies, Mr T Gates, Mr P M Harman, Mr P J Homewood,  
Mr R A Marsh (Substitute for Mr C Simkins), Mrs E D Rowbotham and  
Mr J N Wedgbury

IN ATTENDANCE: Mrs S Thompson (Head of Planning Applications Group),  
Mr R Gregory (Team Leader - Planning Enforcement), Ms J Hamid (Planning  
Contraventions Officer), Mr G Rusling (Public Rights of Way & Access Service  
Manager), Mr A Ballard (Principal Democratic Services Officer) and Mr A Tait  
(Democratic Services Officer)

### UNRESTRICTED ITEMS

#### 1. Minutes - 1 September 2015

*(Item 3)*

RESOLVED that the Minutes of the meeting held on 1 September 2015 are correctly recorded and that they be signed by the Chairman.

#### 2. Home to School Transport Update

*(Item 4)*

(1) The Senior Democratic Services provided an overview of Home to School transport appeal statistics for the period between 1 January 2015 and 31 December 2015, giving a brief comparison with transport statistics from 2010 to 2014.

(2) The Committee agreed that statistical reports would be provided on an annual basis with reports to the other Committee meetings focusing on aspects of Home to School Transport policy.

#### 3. Update on Rights of Way and Village Green Issues (Oral Report)

*(Item 5)*

(1) The Public Rights of Way and Access Service Manager updated the Committee on progress in respect of the Deregulation Act 2015, conveyancing and property conveyancing, and the increase in the number of footpath diversion applications. He also informed the Committee of the sharp drop in Village Green applications which he attributed to the impact of the Growth and Infrastructure Act 2013.

(2) RESOLVED that the report be noted.

#### **4. 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 reported on the ongoing leading role taken by the Planing Enforcement Team in bringing together regulatory teams in the public interest.

(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.)*

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

*(Item 9)*

(1) The Team Leader – Planning Enforcement gave an update on unauthorised planning enforcement matters, setting out actions taken or contemplated in respect of a number of sites. These were Mount Pleasant Farm, Yorkletts; Nt Rix Scaffolding Ltd, Dover; Plant Hire Solutions, West Hougham; RS Skips Ltd, Gravesend; Well Street, Loose; Persimmon Ltd, Iwade; Westdene, Tonbridge; and Top Bungalow, Cranbrook;

(2) RESOLVED that endorsement be given to the enforcement strategies outlined in paragraphs 3 to 10 of the report and in the Schedule in Appendix 1 of the report.

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

*(Item 10)*

(1) The Team Leader – Planning Enforcement reported on developments at the Larkey Wood site in Chartham. This included the decision by Canterbury CC to grant permission for the restoration and development of the site. This meant that a long passage of planning contraventions was now nearing a successful conclusion.

(2) RESOLVED that endorsement be given to the enforcement strategy outlined in paragraphs 6 to 17 of the report.

#### **7. Update on Planning Enforcement issues at Pit-stop, Dargate**

*(Item 11)*

(1) The Team Leader – Planning Enforcement updated the Committee on Planning Enforcement issues at land adjoining Pit Stop Café in Dargate. This included details of the informal views given by him to officers of Swale BC in respect of the shape and content of a retrospective planning application for a lorry park to cover the site.

(2) RESOLVED that endorsement be given to the enforcement strategy outlined in paragraphs 5 to 9 of the report.

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

*(Item 12)*

(1) The Team Leader – Planning Enforcement reported on developments at Thirwell Farm in Hernhill. He described the County Council's role in co-ordinating a multi-agency response and outlined a number of measures which were being considered by the agencies involved in response to the complex and sophisticated nature of the activities at the site.

- (2) RESOLVED that endorsement be given to the enforcement strategy outlined in paragraphs 4 to 15 of the report.

## KENT COUNTY COUNCIL

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# REGULATION COMMITTEE MENTAL HEALTH GUARDIANSHIP SUB-COMMITTEE

MINUTES of a meeting of the Regulation Committee Mental Health Guardianship Sub-Committee held in the Stour Room, Sessions House, County Hall, Maidstone on Tuesday, 26 January 2016.

PRESENT: Mr A H T Bowles (Chairman), Mrs M Elenor, Mrs S Howes, Mr S J G Koowaree and Mr C P Smith

IN ATTENDANCE: Mrs C Fenton (Head of Mental Health) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### 1. Membership

(*Item 1*)

(1) The Sub-Committee noted that Mr A H T Bowles had replaced Mr M J Harrison as the Chairman of the Sub-Committee by virtue of being the Chairman of the Regulation Committee.

#### 2. Minutes - 28 January 2015 (To Note)

(*Item 3*)

(1) RESOLVED that the Minutes of the meeting held on 28 January 2015 be noted.

#### 3. The Local Authority's Guardianship Register

(*Item 4*)

(1) The Head of Mental Health introduced her report by saying that the Sub-Committee (formerly Panel) had been set up in response to amendments to the Mental Health Act 1983 which had been introduced in 2007. Section 23 (2) of the Act enabled a discharge to be made in respect of a patient who was subject to guardianship by the responsible clinician, by the local Social Services Authority or by the nearest relative. In conformity with Section 23 (4) of the Act, this function had been delegated to this Sub-Committee of the Regulation Committee.

(2) The Head of Mental Health went on to say that the 2007 Amendments to the Act had also introduced the requirement for Elected Members to audit the effectiveness of receipt and scrutiny of documents. She moved on to describe the progress of the officer Working Party which had been set up for this purpose. It consisted of three officers from the Social Care, Health and Wellbeing Directorate and two co-opted independent members. The Working Party had met on four occasions over the previous year. It had carried out a great deal of work to introduce robust processes and guidance in order to review and maintain high quality practice as well as accurate recording and reporting of guardianship orders.

(3) The Head of Mental Health then informed the Sub-Committee that following a review, the Working Party was to be renamed “The Guardianship Quality and Scrutiny Panel” (GQSP) Membership would now be strengthened by the introduction of a *Quality Lead* from the Approved Mental Health Professional Service. The GQSP’s remit would include scrutiny of social circumstances reports and legal documents before they were submitted to KCC, mentoring and training on any identified practice issues. A key role was to provide assurance that the named officers responsible for scrutinising applications for new orders and renewals had done so in a robust and informed manner.

(4) The Head of Mental Health moved on to consideration of the national picture. There had been 212 new Guardianship Orders in 2014/15, representing a decrease of 29% from 2013/14. As at 31 March 2015, 522 people in England had been subject to Guardianship Order. This represented a reduction of 108 (17%) from the same date in 2014. The number of Guardianship Orders had declined for the 10<sup>th</sup> year in a row. This was probably to be explained in part by the availability of other mental health legislation such as the Mental Capacity Act. The number of Orders coming to an end during 2014-2015 had also reduced slightly (4%) from the previous year, making this the fifth consecutive year where this had happened. The duration of the Guardianship orders which came to an end during 2014-2015 had ranged from less than 3 months to over 10 years. The median duration of a Guardianship order in England was 12 months

(5) During the past 12 months the working party had reviewed and revised the Guardianship Policy in a number of areas including guidance relating to transfers from Guardianship to Section 3 status (i.e. compulsory detention in hospital for treatment); the procedure to follow should a person subject to Guardianship go absent without leave; the transfer of a person from one local social service authority to another; and the process for appeals to the Mental Health Review Tribunal.

(6) The Head of Mental Health concluded her presentation by saying that robust processes were in place for the acceptance and renewal of guardianship orders, ensuring that consideration was given to the least restrictive options available. Since the last annual report to the Panel, there had been no need for Members to be asked to adjudicate a disputed case, nor to discharge an order in accordance with their powers under section 23 (4) of the Mental Health Act 1983 (amended 2007).

(7) The Head of Mental Health replied to a question from Mr Bowles by saying that the apparent disparity in the Kent total (7) following discharges (3) new Orders (2) and renewals (7) had arisen because someone whose Guardianship Order had been renewed might also have been discharged at a later stage during the year.

(8) The Head of Mental Health also confirmed that after a Guardianship Order was discharged, the individual would continue to receive care and support for their health and social care needs from a multi-disciplinary team of mental health professionals.

(9) RESOLVED that the content of the report be noted together with the list of closed cases since January 2015 (set out in Appendix 1), the current guardianship register (Appendix 2) and the activity during 2015 (Appendix 3).



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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 Gatefield Hall, Alexander Centre, 20-22 Preston Street, Faversham ME13 8 on Monday, 22 February 2016.

PRESENT: Mr S C Manion (Vice-Chairman in the Chair), Mr T A Maddison, Mr L Burgess and Mr J N Wedgbury

ALSO PRESENT: Mr T Gates

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

#### UNRESTRICTED ITEMS

**1. Proposed part extinguishment of Public Footpath ZF5 at Faversham Reach Estate and creation of a Public Footpath beside Faversham Creek linking Public Footpath ZF5 at Crab Island with Public Footpath ZF32 at Ham Marshes**

*(Item 3)*

(1) Members of the Committee visited the application site prior to the meeting. This visit was attended by some 20 interested parties.

(2) The Public Rights of Way and Access Manager began his presentation by explaining that this was the latest proposal to resolve the issue of a long- obstructed public footpath which had been blocked by a wall (formerly the boundary of a shipyard) and by five residential properties in the Faversham Reach Estate which had been built in 1987.

(3) In November 2012, a Regulation Committee Member Panel had decided to take forward a proposal by the Faversham Reach Residents Association for the extinguishment of the footpath where it crossed the estate and the creation of a public footpath outside and following the boundary wall to the estate. The consequent extinguishment and creation Orders had been considered at a Public Inquiry in 2014 by an Inspector, whose decision on behalf of the Secretary of State for the Environment was that neither Order should be confirmed.

(4) The Public Rights of Way and Access Manager then said that the consequence of the Inspector's decision was that the Public Footpath remained obstructed, which was clearly unsatisfactory for all concerned. Accordingly, the County Council had consulted on a number of options and had also commissioned Amey to provide a feasibility report (including costings) on the construction of ramps and a cantilever walkway.

(5) The Public Rights of Way and Access Manager moved on to give a detailed explanation of the Option that he was recommending to the Panel. He began by saying that there was no suggestion that due process had not been followed in

recording Public Footpath ZF5 on the Definitive Map which provided conclusive evidence at law as to its contents. Once established, a public right of way could only be extinguished through a legal event, such as a legal order or in consequence of a Parliamentary Act. Mere disuse did not result in the loss of right of way. Objection had been raised that on the basis of the Ordnance Survey sheet 172-1972 the footpath had been incorrectly recorded in 1970 on the Definitive Map and Statement Draft Revised Map and that this had led to an error in the current Definitive Map. This Ordnance Survey document, however, needed to be viewed in context as it did not purport to show public rights of way. Its purpose was to record physical features. For this reason, it had reflected the widely accepted position that access to the Public Footpath had been very difficult following the construction of the ship yard wall in 1938. Earlier County Series Ordnance Survey maps 2<sup>nd</sup> and 3<sup>rd</sup> editions had shown a route that very closely approximated to the route of ZF5 recorded at Faversham Reach and evidence had been presented to the Public Inquiry that the route of ZF5 had been physically in existence.

(6) Case Law had established that there needed to be sufficient cogent evidence to show that the Definitive Map and Statement required amendment. It had been open to anybody at any time since 1981 to apply to have the Definitive Map amended. Information to this effect had been freely available to all parties together with advice from the County Council. No such application had been received. Nor had the County Council discovered any evidence that would cause it to make an Order to amend or remove the Public Footpath. Indeed, such evidence as had been presented to the County Council weighed in favour of the Footpath having been correctly recorded.

(7) The Public Rights of Way and Access Manager informed the Panel that a number of objectors including a District Councillor had suggested that the County Council should continue to allow the current situation to continue. In effect, they were advocating that the County Council should do nothing. He said that the Panel should take into account that the County Council was under an obligation to assert and protect the right of the public to use and enjoy the public highway and to prevent the obstruction of it. Failure to act would not only result in the public being deprived of the use of the public right of way but would also expose the County Council to action in the Courts and to a Local Government Ombudsman complaint. There would also be continuing implications for the owners of the five properties obstructing the footpath. Furthermore, considerable time and money had already been expended on seeking a solution. The creation of the England Coast Path further highlighted the obstruction of the right of way and posed further questions about access issues, and if the matter were allowed to drop it could very well simply re-emerge at a later date.

(8) The Public Rights of Way and Access Manager went on to say that a number of residents of Faversham Reach felt that the extinguishment of the obstructed section of ZF5 through Faversham Reach should be pursued again. He said that in his view this option was simply unavailable as the Order to extinguish had already been considered by a Planning Inspector on behalf of the Secretary of State and had not been confirmed. That decision had not been challenged by the County Council as it appeared that it was correct in Law. Nor had it been challenged by any other party.

(9) The Public Rights and Access Manager then discussed safety concerns raised by many residents. He said that the section of creek-side walkway at Waterside Close had been specifically designed with public access in mind and that the creek-

side access at Faversham Reach was of similar design. The width of the proposed access was greater than 2 metres wide except at the ramps and there would be plenty of room for users to pass. The area was level, trip free and clearly defined. The proposed design also contained safety rails, which were necessary for the ramps and cantilever walkway because of the narrower width at these points. The proposal did not appear to pose a risk that was out of line with those present on the many miles of waterside paths in Kent and beyond. Many of these ran beside creeks, tidal river sections, along quaysides, harbours, marinas, steep banks, and unguarded cliff edges, but did not always have safety barriers. Whilst there was liability on the occupier for the safety of visitors to the property, this had to be balanced with the general obligation on any highway user to safely account for conditions.

(10) The Public Rights of Way and Access Manager next considered security issues that had been raised by objectors and residents. These had included incidents of criminal and anti-social behaviour which had continued up to the present time. He said in response that criminal and anti-social behaviour in the Faversham Creek area was at relatively low levels when considered as a percentage of all crime and antisocial behaviour within Swale Borough, indicating that there did not appear to be a correlation between public access and crime and anti-social behaviour. He stressed that Faversham Reach was not a gated community. It was subject to public access which allowed the public to deviate around obstructions to public rights of way on land in the same ownership. Waterside Close was not designed as a gated community either. Public access along the creek had been envisaged throughout the planning process and reflected in the design of the estate.

(11) The Public Rights of Way and Access Manager then said that a number of residents had asserted that public access would have a significant adverse impact on property prices and that compensation would be sought accordingly. He informed the Panel that the successful creation or diversion of a public footpath triggered the compensation provisions within the Highways Act 1980. Compensation was limited to those who could show that a value in interest in the land had depreciated or had suffered damage by being disturbed in their enjoyment of land. Claims for compensation needed be submitted within 6 months of the coming into operation of an Order, and disputes were adjudged by the Lands Tribunal. Faversham Reach, however, was already subject to public access, albeit that the public footpath was obstructed. It was intended that the creek-side would also be accessible through Waterside Close. Both of these facts were likely to substantially limit any compensation. The impact of the cantilever walkway on the slipway was de-minimis. The feasibility report indicated that the proposal would not prevent the launching of boats and that it should not restrict the size of boats that may be launched. He confirmed that compensation was not payable in respect of the England Coast Path and coastal access margin.

(12) The next point made by the Public Rights of Way and Access Manager was that the Government was committed to the creation of the England Coast Path (ECP), which would have national trail status and provide continuous access on foot around the coast of England. Land seaward of the trail would be *coastal access margin* to which the public would enjoy access on foot. Kent had been one of the first areas to be considered for the creation of the (ECP). The Public Rights of Way and Access Service had worked closely with Natural England in both defining the alignment of the ECP and establishing its route. Given the specific issues relating to Faversham Creek, the Service had stepped back from involvement in defining the

route of the ECP in this area to enable Natural England to reach an independent view. He was now able to report that their provisional view was that communal areas of Faversham Reach and Waterside Close would be coastal access margin to which the public would have a right of access on foot.

(13) Amey had been commissioned to undertake a detailed feasibility study to identify constraints to the site and provide outline designs for ramps and a cantilever walkway. The Public Rights of Way and Access Manager said that these designs had also assisted in producing an informed estimate of the costs associated with the construction and maintenance of the work. The study had indicated that there were no practical engineering matters that would prevent construction. The estimated cost of the Public Rights of Way and Access Service's preferred designs was £92,979. Solid ramp constructions at all locations were estimated to cost £125,725. He expected lower costs to be achieved than those estimated.

(14) The Public Rights of Way Manager then said that assuming that doing nothing was ruled out as an option, there were simply no low cost or no cost solutions. Even if another option were taken to divert the path within Faversham Reach a ramp would be required to provide access. Feasibility work had already incurred costs as had the previous extinguishment proposal for Faversham Reach.

(15) In respect of funding, the Public Rights and Access Manager said that the consultation process had indicated that the costs of provision would be met through a number of sources. Nevertheless, the commitments from charitable sources still left a substantial amount to be found by Swale Borough Council and Kent County Council against a backdrop of continued financial pressure. There would consequently be a significant risk to making Orders with the intention of delivering creek side access if they could not be implemented. To date, contributions had been identified from *The Faversham Municipal Charities* and *Bensted Charity*. Swale Borough Council had indicated that it would contribute to the cost. The Kent County Council elected Member for the area had indicated that he would support the creation of the route through his Member Fund, if available. Funding might also be available from Natural England for establishment work, were the England Coast Path to be established along the creek.

(16) Policy support for the proposal could be found in the *Faversham Creek Streetscape Strategy* which identified the possibility of improving access to the creek by making a connection between public footpath ZF5 at Crab Island and the Faversham Creek/ Waterside Close quayside path and on to meet public footpath ZF32. The submitted *Faversham Creek Neighbourhood Plan* identified creek-side access as one of its aims. If implemented, the proposal would be in accord with this aim. The examination into the Neighbourhood Plan was held in October 2015 and the Examiner's report was currently awaited. The plan had yet to be put to a local referendum for adoption.

(17) The Public Rights of Way and Access Manager concluded his presentation by saying that the proposal would provide a solution to the long standing obstruction to access through Faversham Reach Estate by resolving issues of blight in respect of the 5 properties that obstructed the public footpath; by delivering the creek side access identified within the *Street Scape Strategy* and emergent *Neighbourhood Plan*; by addressing the longstanding failure to deliver creek side access through a section 106 agreement at Waterside Close; by providing access that most closely

reflected the Government's desire to provide access around the coast of England on foot; and by discharging the County Council's statutory obligations.

(18) Mr Mike Maloney read a statement from the Local Borough Councillor, Mr Mike Henderson who had sent his personal apologies. This statement said that Mr Henderson had lived adjacent to Faversham Creek, on Front Brents, Faversham for over 35 years. He had been a Swale Borough Councillor for Priory Ward for 19 years. He therefore represented the whole of the area under consideration and all of the people who lived in Faversham Reach, Waterside Close and all the surrounding area of North Preston. He opposed the changes proposed to Public Footpath ZF5 and believed that the present situation should be retained.

(19) Mr Henderson's statement continued that here was a footpath adjacent to Faversham Creek along Front Brents and along Crab Island. At the end of Crab Island it turned at point B on the map and went around the back of Faversham Reach. At point X Footpath ZF5, then ZF1, then ZF32 went around the boundary of the old shipyard to rejoin the Creek and the sea wall at the end of Waterside Close. For well over half this distance, the Creek was in sight. This footpath was a long-established part of the well-established Saxon Shore Way. It was therefore already an entirely satisfactory and acceptable footpath which was never far from Faversham Creek. It was extensively used by local residents and by visitors and there was no need for change. There would need to be a very strong reason for a change if one were to be agreed.

(20) Mr Henderson's statement then set out four clear reasons that had led him to object to change. The first of these was Need. The Secretary of State could create a footpath in order to firstly add convenience or enjoyment for a substantial section of the public, and secondly to add to the convenience of persons resident in the area. There was no evidence that this need existed. During the consultation there had been 38 objections to the change and 35 in favour. This hardly indicated an impact on a substantial section of the public. The local Brents Community Association had discussed the proposal and voted unanimously against the change. Mr Henderson's statement that he had lived on the spot and utilised the footpath on a frequent basis over a number of years and had discussed the proposed changes over time with well over 100 people either living locally or utilising the Creekside path as visitors. None of them had objected to the path as it currently existed.

(21) Mr Henderson's second reason for opposing change was Safety, Security and Disabled Access. His statement said that the proposed change required that three substantial links needed to be built. The first was a ramp at points B and C on the map and a cut through the wall around Faversham Reach. The existing footpath across Crab Island was very rough and muddy and this stage of building would not provide disabled access. It would also give walkers immediate access to the moored boats, which was a security risk. There would also be a danger of falls. The second substantial link was the cantilevered footpath adjacent to the slipway at the end of Waterside Close. This would provide a danger of falls, could reduce the ability to use the slipway and would potentially allow people to fall into the mud at low tide or the water at high tide. There would also be a conflict with parked cars. It was intended to take the footpath on the slipway adjacent to the wall of 2 Waterside Close and within two feet of its front door. English Nature in surveying for the national coastal footpath had stated that this would be unacceptable. The third link was a ramp onto Ham Marshes at the far end of Waterside Close. This again would provide the danger of

running above the mud or water depending on tide. There would also be the danger of farm animals such as cows or sheep leaving their pasture. It was highly unlikely that disabled access could be provided.

(22) Mr Henderson's statement then considered the question of cost. The current proposal indicated a cost of construction of some £125,000 plus the £36,000 which had already been spent. There were some suggestions that cost might be reduced. However it was clear that there was a strong likelihood that costs would rise, as there were uncertainties around the design of all three of the building projects. In the present climate of austerity within local and national government it should be entirely clear that such a large expenditure was unjustified unless there was the very strongest of reasons for pursuing the project. It was equally clear that there was no such strong reason for altering the existing footpath. He understood that the Faversham Charities had, over time, set aside approximately £35,000 towards Creekside footpath improvements. This money was also public money. If indeed it was to be spent on footpaths along either side of Faversham Creek then it would be better spent on any number of other parts of the Creekside footpath – across Crab Island, along the sea wall, on Ham Marshes, behind BMM Weston Car Park, or indeed on the eastern side of the Creek in Abbey Ward. There had been no public consultation to determine local views on this.

(23) Mr Henderson's statement then turned to legal questions. It said that the inspector who dealt with the Faversham Reach issue had stated "no guarantee that it is enforceable". Certainly neither Faversham Town Council nor Swale Borough Council had raised any issues regarding footpaths at the time of the planning application. As regards Waterside Close, there had been no clear indication that a footpath was to be created via the 1997 S106 agreement, whilst the other 2005 S106 agreement relating to the last 6 houses in Waterside Close made no mention at all of creating a footpath.

(24) Mr Henderson's statement concluded by saying that there were 4 strong reasons for opposing any action. There appeared to be only a single weak reason for taking action. This was the minor opportunity for bringing a short section of footpath nearer to the Creekside. This possible benefit should be greatly overridden by the 4 objections. His advice to KCC was not to agree to change unless the project could be delivered (including the finance). His strong view was to accept the four major objections and take no action.

(25) Cllr David Simmonds (Faversham TC) spoke in favour of the proposal. He said that the Town Council had long had the ambition to see a continuous creek side walkway and that it had preferred the option rejected by the previous Panel in 2012. He referred to the *Faversham Creek Streetscape Strategy* which had been published in March 2012 and endorsed by both the Swale Joint Transportation Board and Faversham TC. The proposed walkway was also a vital part of the *Faversham Creek Neighbourhood Plan*. Faversham TC had voted by 11 votes to 0 with 1 abstention to support the Option which was now proposed and had also informally agreed to contribute to the development if an Order were made.

(26) Mr Paul Channon, a resident of Waterside Close and the Company Secretary of the Waterside Residents Association spoke against this proposal. He said that some of the points and issues in the report could be erroneous and misleading. The

short timescale between the report being published and the Panel meeting had inhibited detailed reading and analysis, which could be prejudicial to the process.

(27) Mr Channon said that although the Inspector had referred in paragraph 42 of her report to “*...a S106 Agreement relating to Waterside Close that contains a Footpath Creation Agreement,*” there was, in fact, no such document within it. He stressed that this meant that a Footpath Agreement for Waterside Close did not exist.

(28) Mr Channon went on to say that paragraph 26 of the Inspector’s Report referred to the original planning process for Faversham Reach, and stated that there was no mention of the ZF5 footpath in the original planning documentation, nor in the associated minutes. It was unlikely that the Planning Officers and the Planning Committee would have approved the building of 15 houses and a ten-berth sailing marina over a definitive footpath if the drawings and documentation at that time had shown such a path. The likelihood therefore was that the footpath was not on the drawings or in the documentation.

(29) Mr Channon then summarised the history of Pollocks Shipyard, which had opened in 1916, and continued its large shipyard operation through two global conflicts (which would have been times of high activity) until it closed in 1971. It was inconceivable that there would have been, throughout this period, a significant flow of walkers through such a heavily-industrialised, busy and dangerous environment. Apart from the public house at the junction of the Oare and Faversham Creeks, there had been no other destinations of note (such as other works, shops, offices, or people’s houses) on the route. This was still the case today.

(30) Mr Channon then moved on to consideration of Waterside Close. This was a development of 21 properties and about 48 persons, comprising a mix of young families, retired couples, and a number of residents who ran their own businesses, many working from their homes. The road, paths, flowerbeds etc., which were known as the “common-parts” were owned and managed by Waterside Residents Association Limited, which was wholly-owned by the residents. The paths and walkways were used by residents for events such as weddings, anniversaries, summer parties/barbeques, as well as carols and mince-pies at Christmas. The residents themselves were an integrated part of the Faversham Community. Indeed many of them served on local charities and associations.

(31) Mr Channon returned to the S106 document for Waterside Close. He said that rather than contain a Footpath Creation Agreement, it merely proposed one with a blank pro forma as an Appendix. Subsequent landowners (Pro-pan, Royal Bank of Scotland, West Register) had not expressed a wish to proceed. The current landowners (WRAL) did not want or need a public footpath either. The Secretary of State could (under the provisions of the Highways Act 1980) make a compulsory order to create a public footpath if the following criteria are satisfied:

- the path (or way) would add to the convenience or enjoyment of a substantial section of the public; and
- it would add to the convenience of persons residents in the area.

This meant that there had to be a demonstrable need for the landowner’s objections to be overruled. All the residents of Waterside Close are unanimous in that they

neither wanted nor needed a public footpath imposed on their properties. As there were no “destinations of note” that needed to be accessed by the proposed footpath, it would not add to the convenience or enjoyment of a substantial section of the community.

(32) Mr Channon said in summary that the Inspector’s Report on the purported Faversham Reach footpath had highlighted a number of issues that continued to throw doubt on the existence of a definitive footpath before the development of Faversham Reach. The residents of both Waterside Close (48 residents) and Faversham Reach (30+residents) were unanimous in their objection to the proposal, and there was no demonstrable need (either to the residents or indeed to the wider community) for such a proposal. The statutory conditions for creating a footpath at Waterside Close by the use of a Compulsory Order had not been met. In addition, the Brent Community as a whole saw no benefit to the proposal. It regarded the existing walks onto and through farmland as acceptable, and were unlikely to use or prefer another path that went through two residential estates. The stated costs of the proposal were very high, and the costs of the earlier Faversham Reach enquiry had to be added to it together with yet-to-be-costed path refurbishment, compensation payments and ongoing maintenance and corporate liability costs. At a time of severe economic restraint, these monies could be better used by the local authorities in supporting and maintaining services to the community. It was to be welcomed that local charities were offering some supportive finance to the proposal but (no matter how well-meaning they might be) these organisations needed to consider whether these sums could be utilised in a way that more readily met their charitable aims and objectives. The proposal should not be carried forward and should be decisively rejected.

(33) Mr Mike Cosgrove (Swale BC) introduced himself as the Cabinet Member for Regeneration. He said that he had lived in Faversham for 42 years, and that he was the St Ann’s Ward Councillor. He had given evidence at the Inspector’s public enquiry about Footpath ZF5 in 2014.

(34) Mr Cosgrove said that the report to the Panel was clear, soundly evidenced, and that it set out the issues well. Rather than go over the points in detail, he wished to concentrate on Swale BC’s considered position. Swale as the strategic planning authority had been much involved in both the overall aspects of Faversham Creek, including its environment and connectivity as well as the specific issues concerning development control and local planning.

(35) Mr Cosgrove went on to say that Swale BC had worked in partnership over many years with KCC and other statutory bodies with the aim of ensuring that a secure footpath was brought into being along the northern side of the creek. During the 1980s and 1990’s this aim had been frustrated because successive developers of Waterside Close had gone into liquidation, creating considerable difficulties around section 106 agreements and the route of the footpath. This had been set out at the 2014 public inquiry.

(36) Mr Cosgrove said that in 2005 Swale had been instrumental in work that pre-dated the Neighbourhood Plan process, to create a secure framework for Faversham Creek and its surrounding land use. Subsequently when the Neighbourhood Plan was developed, all consultations undertaken had overwhelmingly supported a connected creek-side pathway. Support for this was given by many local bodies,

including members of The Faversham Society that had a special historic interest in the creek. Indeed a member of the Faversham Society had given evidence at the 2014 enquiry in support of the diversion of ZF5 along Faversham Reach.

(37) Mr Cosgrove then said that in Swale BC's opinion the proposal gave clear and untrammelled access along the creek in a way that secured both Waterside and Faversham Reach residents' privacy whilst mitigating blight on the five houses at Faversham Reach that have been constructed over the line of the existing footpath. The proposal would also assist in the creation of the national Coastal Path that was currently being developed around Swale. This, equally, would greatly assist residents in that if this route were chosen for the public footpath and the coast path, the public would only have the right to follow the path along the Creek-side and could not stray into other parts of the two estates.

(38) Mr Cosgrove confirmed that Swale BC had given planning permission for a ramp to be constructed at point M L on the drawing (at the edge of Waterside Close) following agreement with The Ham and Syndale Estate. Funding for this had been secured.

(39) Mr Cosgrove summed up his presentation by saying that the proposal provided all the overwhelming advantages set out in the report and Appendix D, and that it was in line with the Inspector's 2014 judgement. Any objections would need to be considered against the considerable weight of positive evidence and the Inspector's binding judgement in 2014. The outcome of the proposal would be to considerably support the amenity value, whilst enhancing conservation and environment in the area. The practical proposals outlined in the Amey report were proportionate and much in keeping with the area and its history. Consequently, Swale BC supported the recommendation of the proposal and to this end was willing to contribute to its cost, whilst working jointly with KCC to undertake the creation and diversion Orders concurrently.

(40) Mrs Annie Bales introduced herself as a local resident at Waterside Close. She referred to photographs which she had provided to the Panel ahead of the meeting. She said that Photo 1 showed that there was no Statement to accompany the definitive map in relation to Footpath ZF5. Photo 2 demonstrated that it was KCC's position that the definitive map and statement *taken together* provided conclusive evidence of a footpath. Photograph 3 was an email from a former KCC PROW Officer setting out that there were some gaps in evidence. Photo 4 showed an older but illegible map. She asked whether this was the map that had been used. Photos 5, 6 and 7 showed the position of the tow path rather than any recorded PROW, together with a map where the PROW numbers appeared to have been altered. Photos 8 and 9 were statements by former senior employees at Pollock's Shipyard which deserved to be considered closely as they both disputed that anyone had used the alleged footpath during the years that they had worked there.

(41) Mrs Bales then said that in her view, the most logical explanation for these anomalies was that a drafting error had occurred when the latest definitive map had been drawn up. She believed that (given time) it would be possible to demonstrate that the current route of Footpath GFF5 was wrong. Conclusive proof did not exist as there was no accompanying statement.

(42) Mrs Bales continued by saying that, contrary to some claims, no Footpath Creation Order existed. The Section 106 originally envisaged the footpath as commencing at the main gate and not the slipway as was now proposed. She asked whether a legal opinion had been sought for what appeared to be a land grab. If so, she asked whether this would be shared more widely with the residents.

(43) Mrs Bales moved on to summarise her remaining points and questions. She said that the footpath would pass within 2 feet of her unguarded front door. This was totally unacceptable given that a viable alternative on public land already existed a few metres away. Natural England also had doubts as to whether this would be acceptable to them. Was there anywhere else in the country that had a recent footpath order imposed upon them in light of lack of evidenced public desire and need for such a path, especially when an existing serviceable footpath already existed a few metres away? The Crab Island portion of the main footpath became waterlogged and impassable in periods of rainfall.

(44) Mrs Bales then said that Brents Community Association had voted against the proposal. She suspected that there would be no public support for the proposal if the public were to be told that the final cost of the footpath could rise to £200,000 and possibly more rather than the originally estimated £4,000. There was already some resentment that so much money was being spent on regeneration of the creek at the expense of other areas. The eventual final cost figure would include direct and indirect costs, compensation awards, future public enquiries and appeals to the Secretary of State together with legal challenges, maintenance costs, pathway furnishings, repair costs and the costs of a lifetime plan, which appeared to have been missing from the proposal at this stage. She believed that there would be little popular support for such an unnecessary proposal in a time of austerity and severe cuts to public spending. She asked whether there was any evidence to demonstrate public need and desire for the proposal. The residents of Faversham were facing severe cuts to their services, so why was Footpath ZF5 receiving so much money?

(45) Mrs Bales quoted the Police in a report to the Swale Planners concerning the planning proposals for Faversham Reach. She asked why the Police had not been asked for their views on this proposal. The Police had commented:

*"The other concern I have with the current proposal is there will not be any natural surveillance on the public footpath beside the creek. This will not only introduce a personal safety issue but could introduce areas for local youth etc. to congregate."*

(46) Mrs Bales then referred to security concerns. She listed incidents such as abuse from male gangs, a fence being set alight, minor thefts and vandalism. She asked who would take responsibility for clearing up dog mess, needles and other drug paraphernalia. There was no lighting at all on the Waterside footpath and it was not covered by CCTV. Local youth sought out dark areas to drink and take drugs. There had been two sexual assaults nearby. The substantial gates on the Industrial Estate had been put up to stop access by drug users. She asked whether the safety of women (and the fear of lack of safety) at night had been considered. Furthermore, members of the public cutting across the top of the slipway would be placed at risk by the many vehicles using car parking spaces. These vehicles included large commercial vehicles who used the spaces as a reversing area. She asked who would pay in the event of an accident.

(47) Mrs Bales then asked the Panel to consider a number of questions. Who would pay for damage to boats, canoes and kayaks if they crashed into steel girders when caught by a tunnel gust in the whirlpool eddy of the greatly narrowed slipway? Who would pay for stolen safety equipment? How would disabled access be ensured whilst cattle were simultaneously being prevented from entering Waterside Close? Why had a Rights of Way Improvement Plan not been carried out? Why had the Environment Agency and the Maritime agencies not been consulted?

(48) Mrs Bales concluded her presentation by asking why huge sums of public and charities money was being spent on a footpath which was being promoted by a small number of people who knew little about the realities of life in the area. There already was a perfectly serviceable alternative which required no additional finance. She asked for the proposal to be refused.

(49) Mr Brian Caffarey (Faversham Footpaths Group) spoke in support of the proposal. He said that the main arguments in its favour were well summarised in paragraph 2.0 on page 5, and in paragraph 5 of Appendix D of the report. He also believed that that the report was very persuasive in explaining in detail why the various objections carried little weight.

(50) Mr Caffarey then said that it was very important to grasp the opportunity to make a decision which would eventually resolve the long-standing issues regarding public access to Faversham Creek. He added that whilst the delay following the decision of the previous Panel had been unfortunate, it had nevertheless proved beneficial in certain respects. Firstly, the subsequent public inquiry had put to rest all arguments about the existence of, and public need for the footpath. It had also established that there was no reason why the footpath could not be diverted to avoid the houses in Faversham Reach. KCC had a legal duty to remedy the obstruction, and the only issue now was not *whether* the footpath should be diverted but *how* it should be done.

(51) Mr Caffarey went on to say that the present proposal was a substantial improvement on those before the earlier Panel. The path would take the most direct and attractive route along the Creekside and would enable the residents, if they so wished, to close off the rest of their estates to the public. It also remedied the long-standing failure to implement the s.106 agreement to create a public footpath at Waterside Close.

(52) Mr Caffarey said that the whole issue now needed to be considered in the context of Natural England's work to devise a route for the England Coast Path round the Creek. There could be little doubt that they would favour the route before the Panel. He quoted Paragraph 2.0 (fifth bullet point) of the report which said that the proposed option "*provides access that most closely reflects the Government's desire to provide access around the coast of England on foot*". Given that a perfectly usable path already existed along almost the entire waterfront of Faversham Reach and Waterside Close, and that only a relatively small amount of work was required to make it complete by connecting it at either end, it was extremely unlikely that Natural England would propose any other route. Accordingly, it would be logical for the Panel to choose the same route for the diversion of footpath ZF5.

(53) Mr Caffarey added that if the coast path were to run inland, the communal areas between the coast path and the shoreline would be classed as "coastal margin"

and be fully accessible to the public. The report stated on page 194 (paragraph 41) that "*It is not at all clear if NE will consider that the communal areas of Faversham Reach or Waterside Close are excepted areas or form part of the coastal access margin.*" Whilst Natural England had yet to express a view on this, none of the exceptions set out in their Coastal Access Scheme appeared to remotely apply to these communal areas. He believed it was therefore in the residents' interests to support the proposed route for the diversion of footpath ZF5 and for the coast path.

(54) Mr Caffarey concluded his presentation by saying that the report stated that its preferred options for the work needed to divert the footpath was estimated to cost £92k (or less). Charitable contributions would meet £36.5k of this cost. Natural England had said that it would contribute to the cost if this route was chosen for the England Coast Path. Contributions had also been promised by (or could be expected from) a number of other bodies including KCC, Swale BC and Faversham TC. There could be no reasonable doubt that the cost could be met. The overall cost would represent good value in restoring a missing link in an otherwise unbroken path running all the way from the Inner Basin of Faversham Creek round to Hollowshore and Oare, forming an important part of the revitalisation of Faversham Creek.

(55) Mr Jeremy Lamb (Waterside Residents Association Ltd) said that he believed the short notice of the meeting and sight of papers had been unhelpful to providing a full response to the proposal and that it would, if necessary, be challenged. He said that there were a number of issues either raised or missing in the report that might cause the Panel to question the pro lobby's understanding of the financial situation public bodies were facing. The advice in the KCC report was that the proposal should not be agreed if it could not be delivered, and this included securing the finance.

(56) Mr Lamb went on to say that the freehold of the common areas including the proposed footpath was owned by the residents through the Waterside Residents Association Ltd (WRAL). All the residents were deeply committed to Faversham and were heavily involved in campaigns and voluntary services in the town as well as local community groups.

(57) Mr Lamb then said that the s106 dated from 1997 and it was therefore 19 Years since a Section 25 Agreement had first been mooted. The originally suggested route did not traverse the slipway. The Footpath Creation Agreement proposal was never followed up to completion with the developers (as was required within six months and twenty eight days). As no action had been taken for more than ten years, it should be regarded as out of time. Swale BC had allowed the s106 to be disregarded by the developers on the ground and changes agreed with residents in 2015 (and based on the design and intentions being out of date) had effectively rendered the s106 redundant.

(58) Mr Lamb said that WRAL would not agree either to a footpath being established or to the slipway being encroached upon. In the event that it proved necessary, it would seek compensation for costs and loss of use of amenities and value.

(59) Mr Lamb noted that the Inspector in her findings relating to Faversham Reach had noted (para 42) that the Waterside Close s106 had "*no guarantee that it remains enforceable or that it would be enforced and it did not provide a mechanism for joining that route with the wider network*". He added that any Order made under the

Highways Act 1980 will have to show demand. The consultation had, however, shown more opponents than supporters by a vote of 38 to 35. None of the local residents were re in favour, and no analysis had been done to show the benefits of the proposal over the existing path 100 yards away. Furthermore, at the time of the consultation, the costs had been unknown, so respondents had been unable to make a considered judgement.

(60) Mr Lamb then turned to the question of safety and security. He said that the report on the route across the slipway (Points H – I) showed that the writer had not understood WRAL's serious approach to safety. The proposed pathway cut between the few and well-used visitors' parking spaces (which could not be relocated and would have to remain fully accessible) and across the top of the slipway slope. The slipway was signed as a risk area due to its slippery sloping surface and deep water with deep mud and its use was carefully managed by residents. WRAL would not accept any responsibility for the safety of path users. It was WRAL's experience that children from the local area liked to congregate and play on the slipway with scooters and climb into the creek from which they had to be helped out. Neither WRAL nor residents could be responsible for surveillance over a public footpath as suggested in the Statement of Reasons. WRAL would expect KCC, Swale BC and Faversham TC to accept full responsibility for health and safety of the public if this option was chosen against its advice.

(61) Mr Lamb then said that the proposed footpath passed within 24 inches of a front door, which according to Natural England, was against modern guidelines. The route was not overlooked and would compromise security of the houses and businesses as it passed the rear access to gardens. Residents had experienced vandalism, theft from houses and moored vessels as well as damage to fixtures such as safety chains and trees.

(62) Mr Lamb then discussed the question of cost. He said that the cost of access to the Waterside proposal alone was £90,000 which equated to £515 per metre of the pathway. He said that WRAL would expect the Equality Act to be met by including livestock gates at point L that were also disabled- accessible.

(63) Mr Lamb said that *Amey* expected the slipway owners and users to be consulted as well as the Conservation Officer. They had not mentioned other consultees such as the Sondes Estate at Point L, the Marine Management Organisation, Medway Ports and the Environment Agency who would all need to be consulted before any commitment was made to spend more money and begin works in the creek bed. All these consultations would cost money as would licences to carry out the works. The area L flooded (as Amey had pointed out) and he had therefore provided photographs taken a few days earlier of the high tide up to the bund. *Amey* had referred to costs by the slipway being unknown. Maintenance and whole life costs had not been estimate.

(64) Mr Lamb continued by saying that *Amey* said that the cost of providing the proposed access £125,725. This was already high but did not include the unknown costs he had referred to, nor access for equipment, management fees and officers' time. Unusual elements such as tides and unknown components would encourage costs to rise and timetables to stretch. The cost of the inquiry and *Amey*'s report had reached £37,000, giving a total in excess of £160,000 before additional costs were

added in. He asked whether this was a good use of taxpayers' money at a time when Faversham TC, Swale BC and KCC had to be making drastic cuts to essential services and support organisations. Was it right that elderly people and vulnerable adults should be losing their essential services in Faversham so that walkers could have an additional footpath that got them to and from the same place, and which was based on a Neighbourhood Plan that had not yet been accepted and might not be. He added that it would be seen by the taxpayers within the town as a very low priority for expenditure as it would only benefit a small minority who already had a footpath facility. As residents had to meet the full costs of all amenities at Waterside WRAL would expect KCC, Swale BC and Faversham TC to make an annual contribution to the costs of cleaning, maintenance as well as insurance and all safety costs.

(65) Mr Lamb summed up his presentation by saying that the s106 of 1997 could not be relied upon as the Inspector had found that its enforceability was in doubt. The use of the working slipway would be challenged as it would be a loss of amenity and dangerous for open and uncontrolled access; the costs of over £190,000 for a new short footpath with security and safety issues was unjustifiable when there was an adequate and well used footpath within 100 yards, particularly in the context of severe cuts to essential services in the County, the Borough and the town. Annual maintenance costs would also be required.

(66) Mr Andrew Osbourne (Bensted's Charity) said that the proposal was far better than that originally put forward as it was supported by a full engineering report and contained safeguards for the amenity of the local residents. The development of the creekside was supported by 94% of respondents. Bensted's Charity was making available £3,6000 in support of the scheme. This donation was at the discretion of the trustees and was considered an appropriate use of resources by the Charity Commission. He noted the concerns over anti-social behaviour and said that footfall was the best deterrent.

(67) Mr David Pollock (local Faversham Reach resident and owner of the Thames Sailing Barge "Repertor") said that the proposed scheme stood or fell on the as yet unconfirmed s106 Agreement for Waterside Close. If that Agreement were not possible to confirm and seal, any route for ZF5 through Faversham Reach should not be further considered. Options 2 or 3 would provide only considerable public cost and risk, as well as a dis-benefit to the residents of Faversham Reach and existing users of the current route, with no quantifiable monetary benefit to any other party. It would be a waste of public money. The proposal was therefore dependent on the primary Waterside Close S.106 outcome.

(68) Mr Pollock went on to say that the proposed scheme was unnecessary and less attractive than the existing route. The principal users of the existing footpath were people coming and going between the Town Centre, railway station, schools, the Upper Brents residential areas, Brents Industrial Estate and Faversham Shipyard Industrial Estate. These users had no need or desire to divert through a Creekside footpath. The existing route already provided walkers with an attractive link both to the Creekside path ZF32 and to footpaths across marsh and farmland to Hollowshore and Oare Creek. It therefore already formed an excellent component of the proposed National Coastal Path and provided its users with views of a great variety of birds, wild flowers and trees, as well as access to blackberries in season. The proposed route offered none of these attractions, so its benefits appeared to be comparatively negative. It was also unnecessary for those who might wish to view the Creek

directly, because there was already pedestrian access to the frontage from Upper Brents. The proposed scheme was opposed by the overwhelming majority of residents in the catchment area. Local wishes in this regard were a key component of “localism”. There was no empirical evidence of substantive, tested and significant public support for the proposed scheme from potential users or the general public.

(69) Mr Pollock then said that the scheme represented poor value in cost-benefit terms and would be a waste of public money. It appeared that it had yet to be fully funded. The scheme costs were already estimated to be in excess of £125,000, but did not appear to include the costs of survey and scheme preparation, nor additional costs which would be required to provide adequate safety and security measures and maintenance along the route, as well as compensation and acquisition costs. Scheme benefits had not been quantified and qualitative benefits were less favourable than for the existing route. KCC had stated, as part of scheme proposals that no Order would be laid until full funding had been secured. To date this had apparently not been achieved.

(70) Mr Pollock continued that the rationale which underpinned the proposal was based on misconceptions. These were that the footpath existed before the Estate was developed and that it replaced a former towpath through the former shipyard area. A towpath, however, was not a public footpath. It had a completely different legal and functional status. It was abundantly clear from historic photographs of the site and from depositions made to the Public Inquiry by former shipyard workers (including the former Managing Director) that the towpath had never been available to the public as a right of way. In fact, the route had been kept locked to protect the public from dangerous installations, machinery and activities within the shipyard area. Any access to the site, following the shipyard closure would have been trespass and should never have been accepted as evidence of public accessibility.

(71) Mr Pollock referred to his ownership of the Thames Sailing Barge “Repertor” which was berthed in the Creek on the quayside outside Numbers 13, 14 and 15 Faversham Reach. He said that in the light of the recent history of criminal activity along the waterside, he and his wife were very concerned at the risks from unauthorised public access, as well as to the vulnerability of the vessel to misbehaviour or even break-in. In terms of public safety, when the tide was in, there was level access across the decks (which had no guard rails) to deep water and strong currents. When the tide was out, there was a considerable drop to the decks and unguarded access to deep mud on the outside. In either case, the vessel’s hatchways remained vulnerable. If the scheme were to proceed, he would require effective security fencing, along the quay edge as well as CCTV coverage as part of the funded project. To allow adequate access to the vessel, this fencing would have to be installed on the inside face of the quayside capping beam. This would, in turn, reduce the available width for a footpath. The current width measured about 1.8 metres (5ft 11ins) at its narrowest points, which was less than that assumed by the scheme proposals. It was possible that the net width would not conform to regulatory requirements.

(72) Mr John Coulter (Faversham Municipal Charities) said that the proposal would fulfil KCC’s statutory obligations as set out in paragraph 60 of the Inspector’s report. Faversham was a prime area for walking. The indications were that it was both the most direct and scenic route, creating a straight line to Faversham Creek. Faversham Municipal Charities had placed £22,000 into a disbursement account in

support of the scheme. The Charity Commission had confirmed that it considered this to be a perfectly proper use of resources, within its terms of reference.

(73) Mr Mike Palmer (Faversham Reach Residents Association) said that he welcomed KCC's endeavours to resolve the unsatisfactory situation of the alignment of ZF5 as it is shown as passing through Faversham Reach (points C to F to X). It was, however, Faversham Reach Residents Association's (FRRA) position that treatment of that alignment was crucially dependent on the status and outcome of the s106 Order for Waterside Close, through which the alignment was proposed to continue to a junction with the Saxon Shore Way, ZF32 (points H to M). If, for whatever reason, the s.106 Order was not confirmed and sealed, any route for ZF5 through Faversham Reach should be set aside. Without the Waterside Close link, any route through Faversham Reach alone (as set out in Options 2 or 3) would serve no real purpose, nor add any potential public benefit. Such a route would provide only considerable public cost and risk, as well as dis-benefit to the residents of Faversham Reach.

(74) Mr Palmer then said that if the proposal were to proceed, it was FRRA's position that it contained significant shortcomings which would need to be recognised and addressed. If the proposal were not to proceed, FRRA also recognises that KCC had a duty to resolve the issue of the "official" alignment of ZF5 and proposed a constructive alternative to achieve this.

(75) Mr Palmer then gave FRRA's specific responses to the scheme proposals. He first confirmed that FRRA Ltd owned those parts of the Faversham Reach estate not held by the owners of individual properties and also the land external to the shipyard wall from point C to B to X on which the Saxon Shore way rested, together with the proposed site of the new ramp on Crab Island. He then said that FRRA objected because there had been considerable confusion and inefficiency at all levels of local authority concerned with this issue during the previous 27 years since Faversham Reach planning permission was granted. It had been accepted at the Public Inquiry that there had been no mention of or reference to the footpath's existence when planning permission was granted for the estate in the late 1980s. FRRA residents had been unaware of the footpath's existence when purchasing their houses. There have been at least 35 property conveyances where Swale BC had failed to acknowledge this in property legal searches. No attempts had been made to rectify these errors until 2012. Although some local Town Councillors claimed to have been aware of it they had done nothing at the time of the planning application.

(76) Mr Palmer then said that there came a point when it was no longer sensible or practical, nor a value for money solution to continue to attempt to rectify perceived past errors or omissions. Instead, it was necessary to recognise and accept the status quo. A good exemplar in Faversham was that of the frontage to Belvedere Wharf, across the Creek from Front Brents and Crab Island, where despite longstanding efforts to achieve a public walkway along the creek-side (ZF39); it had ultimately needed to be accepted that the quayside would remain as private property.

(77) Mr Palmer moved on to discuss the design proposal. He said that FRRA had reservations about the detail of the proposed designs in that it could not be compelled to agree to construction works on its land without compensation by the local authorities or by the Secretary of State. They were not prepared to agree to this work in the present circumstances and without their concerns being addressed. They were concerned that

the designs might compromise the flood defences of the estate by cutting through the capping beam. They would require an indemnity that this structure and flood defence would not be compromised. Similarly, they would require an indemnity that there would be no permanent structural loading from the proposed new structures onto the existing piling, capping and walkway. They were very concerned about the security measures for the marina and quayside berths in the estate. They had found it necessary in 2004, at considerable expense, to construct fences to prevent access from each end of the estate because of damage done to boats at that time by vandals. Photographs 1 and 2 of the Amey Feasibility Report clearly illustrated the potential vulnerability of the quayside berths. In particular FRRA would require that security fences along the quayside, perhaps similar to those provided for the Town Moorings adjacent to the Albion Taverna would be provided if the proposal were to be imposed. Safe and secure access to moorings at the quayside outside Numbers 1,2,3,13,14 and 15 would be difficult to achieve. Another concern was that no gates preventing access by stray animals had been provided in the design. FRRA would require their provision. The proposed designs for the ramps referred only to maximum gradients of 1:12. However, such gradients were only acceptable for wheelchair users if provided in short runs, divided by landings. Alternatively, continuous ramps could only be provided at a gradient of 1:20 or less (as set out in Building Regulations, Part M, DDA (Disabled Access Regulations)). If such alternative ramp designs were required, this would mean increased costs as well as the land area required to accommodate them.

(78) Mr Palmer then turned to the Waterside s 106 Agreement. He said that in the Statement of Reasons (SoR) and Appendix D, the existence of a s106 Footpath Creation Order appeared to have been assumed for the part of the proposed route through Waterside Close. FRRA understood that this was not certain, and it would be unlikely that the residents would agree to it in the future. If the s106 Order could not be confirmed and sealed, any route for ZF5 through Faversham Reach should be set aside. Without the Waterside Close link, any route through Faversham Reach alone (as set out in Options 2 or 3) served no real purpose, nor added any potential public benefit. Such a route would provide only considerable public cost and risk, as well as dis-benefit to the residents of Faversham Reach, with no quantifiable benefit to any other party. It would be a waste of public money. The proposal as a whole therefore became subsidiary to, and dependent on, the primary Waterside Close S.106 issue. The proposal should recognise this. At the Inquiry, the Inspector had also questioned whether or not the putative s106 order would be enforceable or would be enforced. The proposal would also need to address this issue.

(79) Mr Palmer then said that this was a costly project in times of austerity, which would provide a total of just over 200m of creek-side walk, for an estimated cost of at least £125,000. It had been suggested in the proposal that it might be possible to reduce these costs. He believed that they were equally likely to be increased. The report claimed that the scheme would provide justifiable cost-benefit for the public. FRRA wished to challenge this statement robustly, as one of the charms of walking around Faversham Creek was that it featured views between the gaps framed by buildings. In this context, it needed to be recognised that Faversham Reach was not a controlled, gated development; it was a cul-de-sac. The public could already visit the Creek frontage within the Faversham Reach estate without any public expense. The report and Appendix D stated that there would be public benefits which could be set against the costs. These benefits had not been quantified, so no proper cost-benefit analysis could be made. At present, therefore, this argument had no merit and, in the meantime, the scheme did not provide value for public money.

(80) Mr Palmer said that FRRA was concerned that the costs of the proposed scheme might not be fully funded and committed prior to any work commencing. He understood that Faversham Municipal Charity and Bensted's Charities had earmarked a total donation of £36,500 for "footpaths around the creek", but was unaware how these charities would allocate funds to this scheme. Inevitably this left a considerable shortfall to be found from other sources. He suggested that supporters of the proposal could be invited to raise this money by public subscription in a similar way to that raised in 2015 for the replacement opening bridge. The report and Appendix D stated that no Order would be laid until all funding was in place and committed. He asked what the current status of commitments actually was, given the current public spending constraints.

(81) Mr Palmer then said that vandalism was an issue in Faversham as recent events in the town centre had demonstrated. There had also been recent incidences of theft from vessels moored alongside the quayside on both sides of the Creek. He noted that Appendix D stated that KCC would not undertake any costs of inspection and maintenance of the sections of route between the new structures at either end of the Faversham Reach boundaries, but that KCC appeared to have accepted responsibility for lighting. This would mean that FRRA would become liable for the maintenance effects and repair costs of greatly increased usage, wear and tear of the pavement structures and for refuse collection and disposal. This was not acceptable. The liability and costs needed to be borne by KCC. The proposal also stated that no safety barriers were necessary along the water's edge. This was unacceptable in terms of public safety and of the security of residents' vessels. Provision of suitable measures would be a requirement and would add to the scheme costs.

(82) Mr Palmer then proposed an alternative way forward. FRRA recognised that KCC had a duty to resolve the issue of the 'official' alignment of ZF5 if the proposal were not to go forward. The report and Appendix D stated that the Planning Inspector's decision had excluded further consideration of extinguishment of the ZF5 alignment through Faversham Reach. However, this did not take account of a scenario in which the Waterside Close s 106 Agreement could not be confirmed and where a route through Faversham Reach alone was not cost-effective in cost-benefit terms. In those circumstances, the history and provenance of the alignment would need to be re-examined. Aerial photos probably taken in the 1950s or 1960s and in the 1980s clearly showed that the path followed its present route around the shipyard wall (points B to X). There was a large corrugated iron fence bridging the gap between the creek and the end of this wall. The nature of the shipyard, with its slipways and construction areas was also clearly visible. Equally clearly, these were not safe areas for pedestrians. The report and Appendix D stated that the "official" ZF5 route followed the line and function of a former towpath used to haul vessels without engines up the Creek. But the towpath could not have followed the ZF5 line because of the deeply indented foreshore with docks and slipways. Due to the arrival of almost universal use of engines in vessels, the towpath had not been used since the early part of the Twentieth Century. In turn this meant that the indented shoreline was no longer an obstacle. A towpath (which had a different legal status) did not have the same purpose as a public right of way. It served a commercial and logistic function rather than the public good. The gates through the walls/ boundaries at each end of the shipyard area were always kept locked and only opened by specific request for specific purposes. Depositions to this effect were submitted to the Public Inquiry from those who physically worked at the shipyard in the 1960s, including the former Chief Executive. The report and Appendix D also stated that the proper procedures were followed in setting the alignment of ZF5 and that this was never

challenged at the time. This did not take account of the fact that the premise was flawed and that there had been no active owners or users of the site who could object at that time. The Planning Inspector's decision had been on the assumption that a diversionary route could be achieved through Faversham Reach and onward through Waterside Close. If, in the circumstances he had outlined, this proved not to be possible, the Inspector's decision would also need to be revisited. FRRA therefore proposed that the logical solution would be to extinguish the section of ZF5 which passed through Faversham Reach and, if necessary, to re-designate the existing footpath route between points B and X as part of ZF5.

(83) Mr T Gates (Local Member) addressed the Panel. He said that Faversham TC had voted in support of the proposal by 11 votes to 1 with 2 abstentions. Consultation had revealed overwhelming support for it, including even a political party.

(84) Mr Gates then said that his father had walked the route of ZF5 during the 1920s and 30s. It had been blocked at the start of WW2. Anyone who wished to walk the route during the War had to approach an officer for the key to the gate.

(85) Mr Gates continued by saying that the route had been lost to the people of Faversham for a number of years. He was not sure of all the details of the planning application for Faversham reach but a major factor in his decision had been the promise of a public footpath in front of the houses for the benefit of Faversham as a whole.

(86) Mr Gates concluded his remarks by saying that concerns over the cost of the project should be seen in the context of the millions that had been spent on the Faversham swing bridge. He offered to contribute £10,000 towards the project from his Members' Grant.

(87) The Democratic Services Officer was invited to read a message from Ms Hilary Watson, a Trustee from the Faversham Society. This message stated that, contrary to remarks made during the meeting, it was not the case that the Faversham Society supported the proposal. A representative from the Society had spoken to the 2014 Inquiry, but her submission had not been mandated by the Board. The Board of Faversham Society had neither seen nor discussed the current proposal, and a statement in its "Chairman's Blog" made clear that it neither supported nor opposed it.

(88) Mr Cosgrove responded to the statement from Ms Watson by saying that he had been careful not to claim that the Faversham Society itself supported the proposal.

(89) The Public Rights of Way and Access Manager was asked to comment on the contributions made by speakers during the meeting. He said that he had not seen the s 106 Agreement but was aware of the requirement of Swale BC that the original developers of the Estate should provide Creekside access. He had seen correspondence to this effect between Swale BC and the landowners. Therefore, whilst he did not know what had happened in terms of the Agreement, it was clear that there had been an intention to complete.

(90) The Public Rights of Way and Access Manager referred to comments about disabled access. He said that the design provided a high standard of accessibility,

although for logistical reasons, this might not meet the needs of wheelchair users because there were pressure points along the route where it would be impossible to engineer the necessary width.

(91) The Public Rights of Way and Access Manager said that Footpath ZF5 had been on the revised Definitive Map in 1970 and 1987. It was a matter of regret that this had not been available to the Swale Planners at the time of the Faversham Reach development application. Nevertheless, the reason that the Footpath appeared on the Definitive Map was because rights had been established at some point historically.

(92) The Public Rights of Way and Access Manager stated that there had been no cost benefit analysis in respect of the proposal. This was because the proposal was in response to KCC's legal obligations rather than an intention to create entirely new access.

(93) The Public Rights of Way and Access Manager explained that if the Panel agreed to the proposal, the next step would be for an Order to be made. If there were an objection to it, the matter would have to be referred to the Secretary of State for determination, probably by an Inspector at a Public Inquiry.

(94) The Public Rights of Way and Access Manager confirmed that, at this point, the required funding was not completely available. It would be possible to delay submitting an opposed Order to the Secretary of State until the required funding was in place.

(95) Mr T A Maddison moved, seconded by Mr J N Wedgbury that the recommendations of the Public Rights of Way and Access Manager be agreed subject to an amendment that the submission of an opposed Order to the Secretary of State for determination be delayed pending the necessary funding being made available.

*Carried Unanimously*

(96) RESOLVED that: -

- (a) concurrent but independent Orders be made for the part extinguishment of Public Footpath ZF5 at Faversham Reach Estate and for the creation of a public footpath beside Faversham Creek linking Public Footpath ZF5 at Crab Island with Public Footpath ZF32 at Ham Marshes; and
- (b) at the point when the necessary funding is made available and secured, the Orders be confirmed or, if opposed, submitted to the Secretary of State for determination.

## 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 Friday, 18 March 2016.

PRESENT: Mr A H T Bowles (Chairman), Mr C W Caller, Mr A D Crowther, Mrs V J Dagger and Mr P J Homewood

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

#### UNRESTRICTED ITEMS

##### **2. Application to register land known as Chaucer Fields in Canterbury as a new Town Green**

*(Item 3)*

(1) The Panel Members had all received an electronic copy of the Inspector's report dated 6 August 2015 prior to the meeting

(2) The Chairman informed the Panel that he had previously lived in the vicinity of the site in question. He had not been involved at any stage in the application and was able to approach the determination of the application with a fresh mind.

(3) The Commons Registration Officer introduced the application which had been made under Section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. She referred to Appendix A of the report which showed the location of the site as well as the Public Rights of Way and tracks which crossed it. She also provided photographs of the site including the brown signs (Appendix B) that the Inspector concluded had been erected in 1990 which stated "This land is private property and access by members of the public is by licence only and may be revoked at any time."

(4) The Commons Registration Officer then said that the University of Kent (landowner) had erected blue signs in March 2011, and that this had been made by a group of local resident shortly thereafter in April 2011.

(5) The Commons Registration Officer went on to say that the University of Kent as the landowner had objected to the application. They had claimed that the documentation submitted in support of the application had not been sufficient to prove that use of the land for lawful sports and pastimes had been by a significant number of residents of the locality; that use of the land had been with permission communicated by notices positioned at each entrance to the site; and that such use as had occurred had been confined to public footpaths and "desire lines".

(6) The application had been considered by a Regulation Committee Member Panel on 11 September 2012. The decision had been taken to accept the

recommendation to refer the matter to a Public Inquiry. This Inquiry had taken place in February and March 2015.

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

(8) The first test was whether use of the land had been as of right. It had been agreed by the landowner that use of the land had not been by force or stealth. The University of Kent's objection had been on the basis that use of the site had been with permission. The Inquiry had heard evidence regarding various signs which were said to have been put up before 1990. The main focus had been on the photographs described in paragraph (3) above which stated "This land is private property and access by members of the public is by licence only and may be revoked at any time." Although these photographs had been undated, it had been accepted by the end of the Inquiry that these had been erected between November 1989 and April 1990. In the Inspector's view the most likely date had been between 15 and 22 February 1990.

(9) The Commons Registration Officer said that the Inspector had been satisfied that anyone entering the application site from any of its access points would have seen one of the notices once they had been put up. For this reason, use of the site would have been permissive for as long as the signs were in existence. As the application period had begun in March 1991 (20 years before the erection of the blue signs in 2011), the application would fail if the original signs had been up at any stage after that point. The landowners had accepted that some of the signs had been vandalised, but the Inspector had noted that the University had a maintenance programme. In her view, it was highly unlikely that the landowners would have gone to the trouble of erecting boundary signs with the required legal wording only to fail to maintain them. Her conclusion had been that a number of the signs had been in existence as late as the mid 2000s. For this reason, the Inspector had concluded that use of the land had been with permission and therefore "by right" rather than "as of right."

(11) The Commons Registration Officer then turned to the question of whether the land had been used for lawful sports and pastimes. The Inspector's view was that a significant amount of evidence had been presented to her to demonstrate that the whole site had been used for a wide range of activities.

(12) The Commons Registration Officer went on to consider whether use of the land had been by a significant number of inhabitants of a particular locality or neighbourhood within a locality. The applicants had put forward four claimed neighbourhoods. The Inspector had very carefully considered the representations made and had also walked in the areas claimed. She had concluded that the Harkness Drive Estate constituted a neighbourhood within the locality of the ecclesiastical parish of St Dunstan's.

(13) The Commons Registration Officer said that the application had been well made well within the two year grace period set out in Section 15 (3) of the Commons

Act 2006. The Inspector had also concluded in the light of the evidence given by a significant number of witnesses that the land had also been used for recreational purposes throughout the 20 year period.

(14) The Inspector's overall conclusion had been that the application should not succeed because it failed the test of use having been "as of right" throughout the entire qualifying period of March 1991 to March 2011.

(15) The Commons Registration Officer then said that the Inspector's findings had been sent to the applicants and the landowner for comment. The applicants had accepted that the Inquiry had been professional and thorough, although they were disappointed at the outcome. They still considered that the signs had deteriorated rapidly as a result of neglect by the University and had also put forward the suggestion that even if no other part of the site was considered to be registerable, the strip of land to the south east of the bridleway ought to be. This was because all of the signs had been located on the north west side of the bridleway and there had been nothing which would have conveyed that their message also referred to this strip of land. This suggestion had been put to the Inspector who had concluded that this piece of land would not have been treated any differently to the rest of the site either by the University or the public.

(16) The Commons Registration Officer concluded her presentation by saying that the Inspector's report had been accurate and impartial and that her application of the evidence to the legal tests had been considered and reasonable. Having considered the Inspector's report very carefully, she did not consider that the legal tests had been met and therefore recommended accordingly.

(17) Mr Richard Norman addressed the Panel on behalf of all the applicants. He expressed appreciation for the Inspector's thorough and detailed report as well as for Ms Melanie McNeir's helpful approach to the application and her clear and thorough summary of the issues.

(18) Mr Norman then said that he was pleased that the Inspector had agreed that the site had been used for lawful sports and pastimes and that it was within a qualifying neighbourhood within a locality. He wished it to be recorded that the applicants had considered St Michael's Road and Whitstable Road as cohesive neighbourhoods and that they had not simply sought to identify them as such for the purposes of the application. They each had active Residents' Associations which had been set up for reasons which had nothing to do with the site.

(19) Mr Norman went on to discuss the Inspector's findings in relation to the brown signs. He said that they had all either disappeared or been covered in graffiti by the time that the blue signs had been erected in March 2011. It had also been accepted that they had gone up in February 1990. They had clearly been neglected and the University of Kent had needed to rely mainly on the testimony of its own staff, whose testimony had clearly been co-ordinated and prompted by the photographs provided. This did not mean that there had been any deliberate dishonesty by the landowner; merely that their witnesses were less reliable than those provided by the applicants, whose statements did not necessarily agree with one another.

(20) Mr Norman asked the Panel to consider carefully whether to register the portion of the site south east of the Bridleway. The applicants considered that it was

definitely segregated from the rest of the site, as was demonstrated by the first photograph. The signs were all to the north west of the Bridleway and would have naturally led people to the view that their content only related to the larger portion of the land.

(21) Mr James McCreathe of Wilberforce Chambers spoke on behalf of the landowner. He said that the application had been considered by the Inspector at an Inquiry which had lasted for 9 days and had come to the only conclusion which was fair in Law. This was because Mr Norman and the other applicants would have needed to be able to prove that the signs had not been readable by the public on every single day during the 20 year qualifying period. They had, instead sought to cast doubt on whether they had actually been in existence all the time.

(22) Mr McCreathe then said that the Inspector had duly considered the applicants' representations in respect of the portion of land south east of the Bridleway. He read out the following extract from paragraph 308 of the Inspector's report:

*"The arguments that Mr Westaway advanced to the effect that the 1990 signs should not be regarded as referable to that part, or to any other part other than the south of the track and west of the bridleway, are inconsistent with the evidence and with the geographical, historical and practical realities of the situation. Any reasonable local inhabitants entering the Application Land as a from the directions identified in paragraph 23 above would have considered themselves to be entering the Application Land as a whole, and would have understood "this land" accordingly."*

(23) The Commons Registration Officer said that although there was a hedge on one side of the bridleway, there were gaps within it. People entering the land from Lyndhurst Close would have considered that its message applied to both sides of the bridleway. Another sign to the north east of the site at Leycroft Close also made it clear that it applied to the site in its entirety.

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

(25) RESOLVED that for the reasons set out in the Inspector's report dated 6 August 2015, the applicants be informed that the application to register land known as Chaucer Fields at Canterbury has not been accepted.

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the TN2 Community Centre,Lakeside, Greggs Wood Road, Tunbridge Wells TN2 3LZ on Friday, 18 March 2016.

PRESENT: Mr A H T Bowles (Chairman), Mr C W Caller, Mr A D Crowther and Mr P J Homewood

ALSO PRESENT: Mr C P D Hoare

IN ATTENDANCE: Ms M McLauchlan (Definition Officer) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### 3. Application to extinguish Public Footpath WB71 in Tunbridge Wells *(Item 3)*

(1) The Panel Members viewed the area under question from both entrances prior to the meeting.

(2) The Definition Officer began her presentation by explaining that an application had been received from the landowner, the Town and Country Housing Group (TCHG) to extinguish public footpath WB71. The footpath did not appear on the Definitive Map as the Modification Order had not been made until 15 June 2015 in response to an application by local councillor Frank Williams. The original decision to make the Order had been taken on the basis that public rights on foot were reasonably alleged to subsist due to use by the public over a period in excess of 20 years. A petition had been received after the consultation period against the footpath. By Law, this petition could not be considered as an objection. The Order had not yet been confirmed.

(3) The Definition Officer went on to say that the matter had become further complicated as prior to the making of the Modification Order, a development of 6 dwellings had been built on the land over which the footpath ran. TCHG had not wished to apply for a diversion of the footpath because they considered would neither be in the interests of the occupiers of the new dwellings nor of those local residents who had signed the petition against it. TCHG also considered that the existing footpath between Burslem Road and Greggs Wood Road via Harries Road would serve the same purpose and that footpath WB71 was therefore not needed for public use.

(4) The Definition Officer said that under the changed circumstances, she had concluded that the application to extinguish the footpath was an effective way to resolve this matter. The Extinguishment Order and the Modification Order could be confirmed simultaneously. The result would be that footpath WB71 would never appear on the Definitive Map.

(5) The Definition Officer then set out the legal tests for extinguishment of a public path. The County Council could make an Order to this effect if it considered it expedient to do so on the grounds that it was not needed for public use. This Order could not be confirmed without regard to the extent to which the path was likely to be used by the public, apart from the Order, as well as the effect which extinguishment would have as respects land served by the path or way.

(6) The Definition Officer briefly explained her conclusions in respect of the legal tests. She considered that it was expedient to extinguish the path on the grounds that it was not needed for public use. This was because its use was likely to be limited to a small number of residents from Burslem Road and Allandale Road who wanted to get to the shops and community centre. There were more convenient routes available from other parts of the area, whilst the existing footpath via Harries road generally served the same purpose and was substantially as convenient despite being some 145 metres longer.

(7) The Definition Officer moved on to consider the extent to which it appeared that the path would, apart from the Order, be likely to be used by the public. She said that Mr Hoare, the Local Member and Cllr Frank Williams had both stated that some of their more elderly and infirm constituents would use the path. She asked the Panel to note that the Law did not require that no one at all would use the path, but rather to consider the extent of any likely use. For the reasons already given, she considered that the path would be used by a very small number of people.

(8) The Definition Officer's view on the third test (the effect that extinguishment would have as respects land served by the path or way) was that the land over which footpath WB71 ran was now a residential area of 6 dwellings. Originally, the openings at either end had been for vehicular access, although it had allowed people to cut through from Burslem Road to the shops and community centre. As this path was no longer needed for this purpose, its extinguishment would not adversely affect those residents.

(9) The Definition Officer explained that the question of anti-social behaviour was not one which she or the Panel could have regard to. She had, therefore not considered this factor in the preparation of her report and recommendations.

(10) In response to a question from Mr Caller, the Definition Officer said that there was no legal definition of a suitable alternative route. Each case had to be considered on its own merits.

(11) Mr Homewood asked whether there was an incline along the route of footpath WB71. The Definition Officer replied that there was a slope going through the garages. The incline was the same whether on the footpath or the footway along Harries Road.

(12) Mr Tim Warren (TCHG) addressed the Panel as the applicant. He said that TCHG had managed the estate since 1992. They had demolished 176 properties and built 250 to replace them. A major concern of the residents was the management of anti-social behaviour such as drug use and vandalism.

(13) Mr Warren went on to say that TCHG had been very mindful of local concerns when it had planned the development and created the allotments in March 2014.

They had followed the advice of the Police by not seeking to create a footpath and had received no complaints about the lack of access since then. Whilst TCHG could accommodate the footpath if the Panel were minded not to grant the application, he considered that to do so would defeat the object of the development, whilst going against the wishes of the community and the advice of the Police.

(14) Three local residents spoke in favour of the extinguishment. A resident from Greggswood Road said that everything had been much quieter since the six new houses had been built and the pathway had become inaccessible. There were no longer any needles, drugs, cans and bottles that she used to have to clear away from the entrance to her property and which had made local residents' lives a nightmare. Other factors that should be borne in mind were firstly that the path had been known to provide an additional escape route for shoplifters. Secondly, an elderly lady had recently collapsed in Harries Road. If she had been using the seldom-used path instead, she might well have been dead by the time that she was found.

(15) A second local resident (from Harries Road) said that she could confirm the description given. It would be a terrible backward step if the Extinguishment Order did not go through. This was particularly as the promised additional lighting had never materialised.

(16) A third local resident (from Harries Road) said that he was concerned that the allotments would become a dumping ground and that people using the path would take whatever they wanted from them.

(17) Mr C P D Hoare, Local Member said that the local community was divided on the question. In his view, the mere fact that the path had been in existence proved that it was needed. During the elections, he had canvassed residents in Burslem Road and Allandale Road. One very senior resident had been very strongly opposed to the closure of the footpath because people used it as a cut through in order to get to the shops, particularly the pharmacy.

(18) Mr Hoare added that the local Borough Councillor, Mr Frank Williams was also opposed to the extinguishment. He recognised that there was considerable local concern about events that had taken place along the path and suggested that a possible compromise would be to keep the path open during the day and gate it off at night.

(19) On being put to the vote, the recommendations of the Definition Officer were unanimously agreed.

(20) RESOLVED that, for the reasons set out in the report, the applicant be informed that the application to extinguish Public Footpath WB71 under section 118 of the Highways Act 1980 has been accepted.

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## Update on Planning Enforcement Issues Item 4

Report by Head of Planning Applications Group to the Regulation Committee on 3<sup>rd</sup> May 2016.

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 26<sup>th</sup> January 2016 Regulation Committee Meeting.
2. As part of the 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. This report summarises alleged unauthorised activity and is supported by a schedule which is exempt. However, a list of the cases covered in the schedule is given in paragraph 6 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. The list of cases covered under the schedule, attached to Item 7 (exempt report) of these papers includes:
  - **Mount Pleasant Farm**, Seasalter Lane Yorkletts, Whitstable.
  - **Land adjoining Long Hill playing field**, Romans Road, Dover.

- **Aylesham Road, bridleway**, Dover
- **RS Skips Ltd**, Unit 4, Apex Business Park, Queens Farm Road, Gravesend
- **Nuralite Industrial Estate**, Canal Road, Higham
- ‘**Pit Stop Café**’ site, near Lychgate Services, Dargate
- **Thirwell Farm**, Drove Lane Hernhill
- **Persimmon housing development**, Coleshall Farm, Sheppeway Way, Iwade
- **Top Bungalow**, Friesley Lane, Cranbrook.

### **Meeting Enforcement Objectives**

#### *Themes*

7. The County Council’s Planning Enforcement team are continuing to integrate with other regulatory bodies in a more holistic approach to combating planning contraventions. For instance, there is an attempt to forge new links with HM Revenue & Customs (HMRC) and the Complex Investigations Team of Trading Standards. This potentially opens new avenues of enquiry and sanctions, especially in the more demanding and complex cases. More extensive research and precision is required in this type of work but there are potential rewards in terms of more complete and effective actions.
8. Co-ordination and the joining of powers are key to achieving shared goals. Such working relationships need to be developed and maintained. The required energy and commitment is being invested, which is helping in the resourcing of cases. It also allows a pooling of information and to ensure that all relevant authorities are briefed on areas of common interest. Indeed, the County Council along with other large organisations has a duty under relevant statutes to report any suspicious activity to the relevant authorities, particularly in the areas of criminal and financial misconduct. Alleged evasion of landfill tax would be an example.
9. At a strategic level, the Environment Agency continues to host peer group meetings including KCC Planning Enforcement and our counterparts from Surrey and East and West Sussex. A presentation on waste enforcement awareness training (principally for District Councils) is in preparation, along with good practice guides. Different types of early warning systems are also being considered given the common problem of construction spoil and soils being deposited and processed at unauthorised locations. This tends to increase during the warmer months and as the economy improves.

#### *Enforcement capacity*

10. Enforcement capacity derives in large part from the networking of available resources across the public sector. This in turn needs to be efficiently targeted, ideally in an intelligence-led way.

**Achievements / Successes**

11. Larkey Wood, Chartham is our most recent achievement from a planning enforcement perspective. Work continues on the case to ensure compliance with the secured enforcement strategy. Members will recall that restoration of the original and 'overspill' sites have been secured within the housing development scheme, granted planning permission by Canterbury City Council. All relevant costs have been absorbed by the private developer. Attention has now switched to the discharging of conditions under the planning permission, with a site de-contamination scheme already in place and archaeological safeguarding under current discussion. The time and resources freed from this site are being put to use by the County Planning Enforcement team in other pressing cases.

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

12. There are no substantive new cases requiring particular Member attention under this section.

**Significant on-going cases**

13. I give advice and progress on a number of significant on-going cases in the schedule attached to Item 7 of these papers.

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

14. No cases identified on this occasion.

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

15. 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 monitoring charging scheme. Since the last Regulation Committee, we have made a further 12 chargeable monitoring visits to mineral and waste sites, yielding a related income to the Group.

**Resolved or mainly resolved cases requiring monitoring**

16. 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 reoccur. 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. In this instance, there are no cases to report back.

**Conclusion**

17. The County Planning Enforcement Team is actively seeking to share common enforcement workloads with other regulatory teams in the public interest. The approach has value at a range of scales. Waste planning contraventions tend to derive from a network of sources. The public sector response needs to be equally co-ordinated and decisive. The free-flow of accurate and precise information is vital to the success of any single or joint action. Intervening in an intelligence-led way is becoming increasingly important, given the level of sophistication and challenge, particularly in the larger and more complex cases. Traditional planning enforcement may offer a central core of action but in modern and more demanding contexts a more holistic approach is needed.

**Recommendation**

18. 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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