

REGULATION COMMITTEE

Tuesday, 13th September, 2016

10.30 am

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

There will be a training session on Special Educational Needs processes at 9.30 am on the morning of the meeting.





AGENDA

REGULATION COMMITTEE

Tuesday, 13th September, 2016, at 10.30 am
Council Chamber, Sessions House, County Hall, Maidstone

Ask for: **Andrew Tait**
Telephone: **03000 416749**

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 P J Homewood,
Mr M J Harrison, Mr J M Ozog, Mr C Simkins and Mr J N Wedgbury
- UKIP (3) Mr H Birkby, Mr L Burgess and Mr A D Crowther
- Labour (4) Mr C W Caller, Mr G Cowan, Mr T A Maddison and
Mrs E D Rowbotham
- Independents (1): Mr P M Harman

UNRESTRICTED ITEMS

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

1. Membership
To note that Mr M J Harrison has replaced Mr T Gates on the Committee
2. Substitutes
3. Declarations of Interests by Members in items on the Agenda for this meeting.
4. Minutes - 3 May 2016 (Pages 5 - 8)
5. Update from the Definitive Map Team (Pages 9 - 12)
6. Update on Planning Enforcement Issues (Pages 13 - 18)
7. Date of next meeting
To note that the next meeting of the Committee will be on Tuesday, 24 January 2017.

8. Other Items which the Chairman decides are Urgent
9. Motion to exclude the public.

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

EXEMPT ITEMS

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

10. Update on Planning Enforcement issues (Pages 19 - 28)
11. Update on Planning Enforcement issues at Pit-Stop, Dargate (Pages 29 - 34)
12. Update on Planning Enforcement issues at Thirwell Farm, Hernhill (Pages 35 - 46)

Peter Sass
Head of Democratic Services
03000 416647

Monday, 5 September 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.

KENT COUNTY COUNCIL**REGULATION COMMITTEE**

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 3 May 2016.

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

IN ATTENDANCE: Mrs S Thompson (Head of Planning Applications Group), Mr R Gregory (Team Leader - Planning Enforcement), Mrs L Wilkins (Definitive Map Team Leader) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS**9. Minutes**
(Item 3)

(1) The Committee noted that name of the speaker in paragraph 1 (66) of the Minutes of the Member Panel meeting on 22 February 2016 should read "Mr Osborne" and that the figure given in that sub-paragraph should read £3,600.

(2) The Definitive Map Team Leader informed the Committee that the Orders for Public Footpath ZF5 at Faversham had now been drafted. They were currently being checked and would be signed and sealed by the end of May 2016 at which point the consultation period would commence.

(3) The Definitive Map Team Leader informed the Committee that the Order for the extinguishment of Public Footpath WB71 at Tunbridge Wells had now been made and that the period for objection to be raised was due to expire on 13 May 2016.

(4) Mr T Gates asked for his personal congratulations to all the officers from the PROW Team to be recorded in respect of the consistently high quality of advice that had been provided to all parties involved in the Public Footpath ZF5 decision making. As the Local Member for Faversham, he also wished to thank the Panel Members for the courteous and fair approach they had taken during the Panel meeting on 22 February.

(5) The Committee noted correspondence from Mr Osborne that Bensted's Charity had £14,500 set aside and available to fund the required infrastructure rather than £3,600 as set out in the Minute, and that this together with the contribution from the Municipal Charities made a total of £36,500 available from the Faversham charities.

(6) RESOLVED that subject to (1) above:-

- (a) the Minutes of the Committee meeting held on 22 January 2016 and of the Member Panel meetings held on 22 February 2016, 18 March 2016 (Chaucer Fields) and 18 March 2016 (Tunbridge Wells) are correctly recorded and that they be signed by the Chairman; and
- (b) the draft Minutes of the Mental Health Guardianship Sub-Committee held on 26 January 2016 be noted.

10. Update on Planning Enforcement Issues

(Item 4)

(1) The Head of Planning Applications Group gave an update on planning enforcement matters since the last meeting of the Committee. She reported on the continuing integration of the Planning Enforcement Team with other regulatory bodies in terms of practical working and on a more strategic level. She highlighted the successful outcomes achieved at Larkey Wood, Chartham, resulting in more time and resources being available for other pressing cases.

(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.)

11. Update on Planning Enforcement issues *(Item 7)*

(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 Peasant Farm, Yorkletts; Roman Road, Dover; Aylesham Road, Dover; RS Skips Ltd, Gravesend; Nuralite Industrial Estate, Higham; Persimmon Ltd, Iwade; and Top Bungalow, Cranbrook.

(2) The Team Leader – Planning Enforcement confirmed that the reported breach at Willow Farm Equestrian, Faversham was at the early stage of investigation.

(3) RESOLVED that endorsement be given to the enforcement strategies outlined in paragraphs 3 to 8 of the report and the content of the attached Schedule/Appendix.

12. Update on Planning Enforcement issues at Pit-stop, Dargate *(Item 8)*

(1) The Team Leader – Planning Enforcement updated the Committee on Planning Enforcement issues at land adjoining Pit-stop Café in Dargate. This included progress on the retrospective planning application to Swale BC for a proposed lorry park to cover the site.

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

13. Update on Planning Enforcement issues at Thirwell Farm, Hernhill *(Item 9)*

(1) The Team Leader – Planning Enforcement reported on current enforcement actions and future actions contemplated within the overall strategy to achieve full restoration of the site.

(2) RESOLVED that the enforcement strategy outlined in paragraphs 4 to 14 of the report be endorsed.

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Update from the Definitive Map Team

A report by the Definitive Map Team Leader to Kent County Council's Regulation Committee on Tuesday 12th September 2016.

Recommendation:

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

Progress with Definitive Map Team applications

1. Members requested that a summary of the current position of applications to amend the Definitive Map and Statement (DMS) be provided annually to the Regulation Committee.

Section 53 Applications

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

2.1 During the period April 2015 to March 2016, 8 applications were determined, 3 were declined, 6 Orders were made and 6 were confirmed. There are currently 23 unallocated applications resulting in a backlog of approximately 2½ years. Six applications have been received so far this year.

2.2 There are 3 cases currently with the Planning Inspectorate awaiting determination:

- i. 2 of which are Appeals against the County Council's refusal to make an Order (for claimed paths at Sevenoaks) and
- ii. 1 for a claimed path at Charing where objections were received. A Public Inquiry took place on 6th September to hear the objections and a decision will be issued in due course.

2.3 The Schedule of Applications, which is updated quarterly, can be located on the County Council's website at:

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

Applications to divert, extinguish or create public rights of way

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

is generally only possible to do this in cases where the right of way is considered to be 'unnecessary' or 'not needed for public use'.

3.1 During the period April 2015 to March 2016, 19 Public Path Orders have been confirmed (including one to facilitate the safe crossing of a railway), 3 routes have been created through agreement with the landowner and 27 applications are currently being processed. There are fifty six unallocated diversions/extinguishments resulting in a backlog of approximately 2 years between the receipt of an application and allocation to an officer.

3.2 During the above period, 1 Order (for the diversion of Footpath CC34) has been referred to the Planning Inspectorate for resolution and this is being determined through the written representation procedure with a decision expected in December.

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

3.4 The County Council also deals with applications under the Town & Country Planning Act 1990 to close or divert public rights of way that are affected by development. This work is undertaken on behalf of some District Councils (namely Ashford, Dartford, Gravesham, Sevenoaks, Shepway, Swale, Tonbridge & Malling & Tunbridge Wells and the Ebbsfleet Development Corporation) and also in respect of its own planning functions. The County Council is currently processing 10 such applications.

3.5 A copy of the current schedule of applications is available on the County Council's website at:
<http://www.kent.gov.uk/waste-planning-and-land/public-rights-of-way/change-rights-of-way>

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

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

4.1. During the period April 2015 to March 2016, 18 Deposits have been received.

Legislative Update

4. Deregulation Act 2015 - It was reported at the last annual update that the regulations would be introduced in April 2016, unfortunately these have been delayed and at this stage Defra have not given a date but stated that they would be published later this year. The potential impacts on the Public Rights of Way & Access Service will be better understood when the regulations are published.

CON 29 Forms for property searches

6. As of the 4th July the Law Society has issued revised forms for property searches (CON29 – questions asked in respect of all searches and CON29O optional search questions). The aim of the revised forms is to improve the quality and consistency of the information provided by local authorities when members of the public and business are buying or leasing properties. The questions in relation to public rights of way have been moved from the optional CON 290 to the CON 29 form, meaning that they will be asked every time a search is completed. The new questions in relation to PROW are as follows:-

Is any public right of way which abuts on, or crosses the property, shown on a definitive map or revised definitive map?

Are there any pending applications to record a public right of way that abuts, or crosses the property, on a definitive map or revised definitive map?

Are there any legal orders to stop up, divert, alter or create a public right of way which abuts, or crosses the property not yet implemented or shown on a definitive map?

6.1 The above questions seek information about existing and pending PROW which might cross or run alongside the boundary of the specified property.

6.2 The question surrounding Common Land and Town or Village Greens remains part of the optional form (CON 290) but in addition also includes a question about landowner deposits under section 31(6) of the Highways Act 1980 and section 15A of the Commons Act 2006.

6.3 A portal has been developed to enable the questions to be answered by the District and Borough Council Land Search Teams in the first instance. Searches relating to affected properties are passed to the County Council for response.

Applications to register Village Greens

7. There are currently three applications under section 15 of the Commons Act 2006 outstanding, namely:

The Downs at Herne Bay (VGA614);

Whitstable Beach (VGA658); and

Land at Cryalls Lane at Sittingbourne (VGA666).

7.1 A further two applications have been received this year (involving land at Hythe Green and land at Grove Park Avenue, Sittingbourne) which have not yet been formally accepted for investigation, pending the outcome of enquiries with the relevant planning authorities as to whether any 'trigger events' apply to the lands in question (i.e. existing development proposals which would preclude the making of a Village Green application). A further application involving land at Hospital Field at Brabourne has been returned to the applicant on the basis that it appears to be affected by proposed development and, as such, cannot be considered for Village Green status.

7.2 A Public Inquiry into the application to register Whitstable Beach as a Village Green began in April and sat for seven days, but it was not possible to get through the very large volume of evidence in the allotted time and the Inquiry was therefore

adjourned to resume on 3rd October 2016 for a further six days. It will take place at the Marine Hotel at Whitstable. Once all of the evidence has been completed, the Inspector (a Barrister appointed by the County Council) will prepare a report setting out her findings and recommendation to the County Council, which will then be referred to a Regulation Committee Member Panel for a final decision. That final decision is not expected until at least next Spring.

Recommendation

8 I RECOMMEND Members consider this report and note its content.

Contact Officer:

Laura Wilkins - Definitive Map Team Leader

Public Rights of Way & Access Service

Tel: 03000 413480 - Email: laura.wilkins@kent.gov.uk

Update on Planning Enforcement Issues

Item 6

Report by Head of Planning Applications Group to the Regulation Committee on 13th September 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 3rd May 2016 Regulation Committee Meeting.
2. As part of the reporting format, alleged unauthorised sites are 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 10 (exempt report) of these papers includes:
 - **Land adjoining Long Hill playing field**, Romans Road, Dover.
 - **Aylesham Road, bridleway**, Dover
 - **Sewage Treatment plant**, Betteshanger, Deal.

- **RS Skips Ltd**, Unit 4, Apex Business Park, Queens Farm Road, Gravesend
- **Malling Wood**, Bell Lane, Boxley.
- **Five Acre Wood School**, Maidstone.
- **Little Hill Care Home St Michaels**, Tenterden
- **'Pit Stop Café'** site, near Lychgate Services, Dargate
- **Thirwell Farm**, Drove Lane Hernhill
- **Willow Farm Equestrian Centre**, Hanslett Lane, Faversham.

Meeting Enforcement Objectives

Themes

7. The County Council's Planning Enforcement team is continuing to work collaboratively with other regulatory bodies in combating planning contraventions and breaches of allied legislation. Closer links are being forged with existing enforcement partners, covering land, environmental and amenity interests. New bodies are also being added in an innovative way, with access to more direct business-related powers and sanctions. The evidential threshold is normally higher within these areas of commercial regulation but the sanctions can be more meaningful. These further operational links are offering new and important avenues of enforcement. All embracing contraventions require an all embracing response.
8. Whilst closer working brings an operational benefit to all parties, it should be pointed out that there is a duty to co-operate among such bodies in any event. Page 12 of the DCLG's 'A Plain English Guide to the Localism Act', November 2011, states that: "*The duty requires local authorities and other public bodies to work together on planning issues*". Regulatory bodies may have specialist responsibilities but they share a single public purpose and interest. Allied to this, the County Council along with other large organisations has a duty under relevant statutes (and particularly in relation to NAFN – the National Anti-Fraud Network) 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. These are reflected in multi-agency meetings for bodies operating within Kent, at the same venue. However, the problems associated with errant quantities of bulk construction-type materials finding their way onto land (for deposit and / or processing) are generic within and outside of the Kent County border. This activity is particularly prevalent during the summer months, as now.

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.

Enforcement and related policies

11. The County Council adopted its Minerals & Waste Local Plan on 14th July 2016. A number of policies are relevant to the planning enforcement arena but I would draw attention to two of them:

- **Policy CSW3** 'Waste Reduction' – This seeks the minimisation of construction spoil at source, as an example of positive development management. This in turn will reduce the potential for planning enforcement problems further along the line (see first attached extract).
- **Policy DM22** – 'Enforcement' – This gives policy support to existing planning enforcement work and with adopted status will help to reinforce the County Council's position in any formal actions (see second attached extract). It will also give a local plan policy focus for combined action with other authorities in the context of paragraphs 7 to 9 above.

Achievements / Successes

12. **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.
13. I reported to the last meeting on site de-contamination works and archaeological safeguarding. All surplus and extraneous materials have been removed from site and land contouring has been advanced. I hope to report in more detail at the Meeting, following a planned further site inspection.

New Cases, especially those requiring action / Member support

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

Significant on-going cases

15. I have given advice and progress on a number of significant on-going cases in the schedule attached to Item 10 of these papers.

Other cases / issues of interest and requests from Members

16. No cases identified on this occasion.

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

17. 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 25 chargeable monitoring visits to mineral and waste sites, yielding a related income to the Group.

Resolved or mainly resolved cases requiring monitoring

18. 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

19. The County Planning Enforcement Team continues to integrate and work more closely with other regulatory bodies, tied to a common public interest. Waste planning and allied breaches within the private sector usually interrelate. They require the same connected response from the public sector. The interchange of high quality and up to date information is vital in ensuring the success of any single or joint action. Planning enforcement powers relate to land. This single focus has been developed by the team into a co-ordinating role, with the aim of combining actions across multiple authorities and sites.

Recommendation

20. I RECOMMEND that MEMBERS NOTE & ENDORSE:

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

Case Officers: KCC Planning Enforcement Team

03000 413380 / 413384

Background Documents: see heading.

Kent County Council

Policy CSW 3

Waste Reduction

All new development should minimise the production of construction, demolition and excavation waste and manage any waste in accordance with the objectives of Policy CSW 2.

The following details shall be submitted with the planning application, except for householder applications:

- 1. the measures to be taken to show compliance with this policy**
 - 2. the details of the nature and quantity of any construction, demolition and excavation waste and its subsequent management**
- New development should include detailed consideration of waste arising from the occupation of the development including consideration of how waste will be stored, collected and managed.**

In particular proposals should ensure that:

- 1. there is adequate temporary storage space for waste generated by that development allowing for the separate storage of recyclable materials; and**
- 2. as necessary, there is adequate communal storage for waste, including separate recyclables, pending its collection; and**
- 3. storage and collection systems (e.g. any dedicated rooms, storage areas and chutes or underground waste collection systems), for waste are of high quality design and are incorporated in a manner which will ensure there is adequate and convenient access for users and waste collection operatives and will contribute to the achievement of waste management targets; and**
- 4. adequate contingency measures are in place to manage any mechanical breakdowns. All relevant proposals should be accompanied by a recycling & waste management strategy which considers the above matters and demonstrates the ability to meet local authority waste management targets.**

Kent County Council

7.19 Policy DM 21: Incidental Mineral Extraction

7.19.1 Policy DM 21 seeks to provide certainty that proposals for incidental mineral extraction will be permitted provided that operations do not cause unacceptable adverse impacts to the environment or communities.

Policy DM 21

Incidental Mineral Extraction

Planning permission for mineral extraction that forms a subordinate and ancillary element of other development will be granted provided that operations are only for a temporary period. Where planning permission is granted, conditions will be imposed to ensure that the site can be restored to an alternative after-use in accordance with Policy DM 19 should the main development be delayed or not implemented.

7.20 Policy DM 22: Enforcement

7.20.1 The Plan seeks to promote sustainable development within Kent. Positive and balanced policies have been designed to help support and encourage this principle. Hand-in-hand with this objective is the need to ensure a general upholding of planning law. Within this context, informal and negotiated solutions to planning control problems are sought, acting with discretion and in a proportionate way. However, there will be occasions when determined planning breaches cause significant environmental and amenity issues and may threaten the integrity of the planning system. To fully meet such challenges requires the actions of a local control and management regime and the support of a recognised policy base.

Policy DM 22

Enforcement

The County Council will carry out its planning enforcement functions within the terms of its own Enforcement Plan/Protocols (and any subsequent variations) and specifically for waste-related matters, in light of the European Union Waste Framework Directive 2008/98/EC.

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

Agenda Item 10

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Agenda Item 11

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