

**REGULATION COMMITTEE**

**Thursday, 28th September, 2017**

**10.00 am**

Council Chamber, Sessions House, County Hall,  
Maidstone





## AGENDA

### REGULATION COMMITTEE

**Thursday, 28th September, 2017, at 10.00 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 (14)**

- Conservative (12): Mr A H T Bowles (Chairman), Mr S C Manion (Vice-Chairman), Mr K Gregory, Ms S Hamilton, Mr P J Homewood, Mr R A Marsh, Mr D Murphy, Mr J M Ozog, Mr R A Pascoe and Mr A M Ridgers (2 Vacancies)
- Liberal Democrat (1) Mr I S Chittenden
- 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 - 26 July 2017 (Pages 5 - 8)
4. Update from the Definitive Map Team (Pages 9 - 12)
5. Update on Planning Enforcement Issues (Pages 13 - 18)
6. Other Items which the Chairman decides are Urgent
7. Motion to exclude the public

That 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 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)*

8. Update on Planning Enforcement Cases (Pages 19 - 36)

John Lynch  
Head of Democratic Services  
03000 410466

**Wednesday, 20 September 2017**

*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 Wednesday, 26 July 2017.

PRESENT: Mr A H T Bowles (Chairman) Mr I S Chittenden, Mr K Gregory, Ms S Hamilton, Mr P J Homewood, Mr S C Manion, Mr R A Marsh, Mr D Murphy, Mr J M Ozog, Mr R A Pascoe, Mr H Rayner (Substitute for Vacancy), Mr A M Ridgers and Mr M E Whybrow (Substitute for Mr P M Harman)

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

### UNRESTRICTED ITEMS

#### 10. Election of Vice-Chairman

*(Item 2)*

(1) The Chairman moved, seconded by Mr K Gregory that Mr S C Manion be elected Vice-Chairman of the Committee.

*Carried with no opposition*

(2) RESOLVED that Mr S C Manion be elected Vice-Chairman of the Committee.

#### 11. Terms of Reference and dates of future meetings

*(Item 4)*

(1) RESOLVED that the Terms of Reference be noted together with the future meeting dates on

Thursday, 28 September 2017 and  
Tuesday, 23 January 2018.

#### 12. Minutes

*(Item 5)*

RESOLVED that:-

- (a) the Minutes of the Committee meetings held on 24 January 2017, 15 February 2017 and 25 May 2017 are correctly recorded and that they be signed by the Chairman;
- (b) the Minutes of the member Panel meeting held on 1 March 2017 are correctly recorded and that they be signed by the Chairman; and
- (c) the draft Minutes of the Mental Health Guardianship Sub-Committee meeting of 31 January 2017 be noted.

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

*(Item 6)*

- (1) The Head of Planning Applications Group gave an update on planning enforcement matters since the Committee meeting on 24 January 2017. This included the issues at Water Lane/Moat Road in Headcorn which the Committee had considered at its special meeting on 15 February 2017. She drew the Committee's attention to the completed restoration of Larkey Wood in Chartham.
- (2) RESOLVED that the actions taken or contemplated in the report be noted and endorsed.

## **EXEMPT ITEMS**

### **(Open Access to Minutes)**

*(Members resolved under Section 100A of the Local Government Act 1972 that the public be excluded 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.)*

#### **14. Update on Planning Enforcement cases**

*(Item 9)*

(1) The Head of Planning Applications Group and the Team Leader – Planning Enforcement gave an update on unauthorised planning enforcement matters, setting out actions taken or contemplated at Ashford Waste Water Treatment Works, Ashford; Larkey Wood, Chartham; Hoath Primary School; Dartford Technology College; Wilmington Academy; Wentworth Primary School; Roman Road, Dover; Aylesham Road, Dover; Downs Road, Studdal; Stockbury Valley; Water Lane/Moat Road, Headcorn; Crockenhill, Sevenoaks; “Pit Stop Café”, Dargate; Thirwell Farm, Hernhill; Oare Creek, Faversham, Willow Farm, Faversham; White Leaf Riding Stables, Teynham; Newington Industrial Estate; Spratling Court Farm, Manston; and Blaise Farm Quarry, Kings Hill.

(2) During discussion of this item, the Committee decided that it would not remove Dartford Technology or Dover Road, Studdal from the schedules.

(3) The Committee agreed that the Chairman of the Committee and of the Planning Applications Committee should arrange a meeting with the Director of Infrastructure in respect of the implications of the alleged breaches at Hoath Primary School, Wilmington Academy and Wentworth Primary School, Dartford.

(4) RESOLVED that:-

- (a) subject to (2) above, the enforcement strategies outlined in paragraphs 3 to 12 of the report and its appended schedule; and
- (b) the Chairman of the Committee and of the Planning Applications Committee be requested to discuss the implications of the alleged breach at Hoath Primary School, Wilmington Academy and Wentworth Primary School, Dartford with the Director of Infrastructure.

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## Update from the Definitive Map Team

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A report by the Public Rights of Way and Access Manager to Kent County Council's Regulation Committee on Thursday 28th September 2017.

### **Recommendation:**

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

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### **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 2016 to March 2017, 5 applications were determined, 2 were declined and 5 Orders were made and confirmed. There are currently 31 unallocated applications resulting in a backlog of approximately 2½-3 years. There has been a marked increase in the number of applications received due to the fact that User Groups are preparing for the 2026 cut-off date (please see below for more detail on this). During 2016, 9 applications were received and already this year, 12 have been received and many more are expected.

2.2 There is 1 case currently with the Planning Inspectorate awaiting determination:-

- Claimed Bridleway at Kingsnorth (Steeds Lane) – Order made, objections received on the grounds that the way should be of a higher status. The Order has been submitted for non-confirmation on the basis that the route should be shown as a full highway and therefore not something that can be shown on the DMS.

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 2016 to March 2017, 29 Public Path Orders have been confirmed (including 2 to facilitate the safer crossing of a railway), 2 routes have been created through agreement with the landowner and 3 have been created by Order and 27 applications are currently being processed. There are 57 unallocated diversions/extinguishments resulting in a backlog of approximately 2-2<sup>1/2</sup> years between the receipt of an application and allocation to an officer.

3.2 During the above period, 2 Orders (for the diversion of CC34 and SD252) were referred to the Planning Inspectorate for resolution and both were confirmed one following the written representation procedure and the other following a Public Hearing.

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. Regrettably the backlogs have grown since the last update, there has been an increase in the number of Town & Country Planning Act applications which are given priority over other areas of work and as stated above we have seen an increase in the number of section 53 applications. In order to try and reduce the backlog for Highways Act applications, we have been trialling the use of consultants carrying out this work. Surrey County Council is currently processing 3 applications on behalf of the County Council and whilst this has meant that an additional 3 applications have been allocated, it has still involved much officer time in carrying out site visits, creating templates, providing them with all the information they need, checking Reports and Orders etc. We will therefore have to review the process and determine whether or not we should continue with this arrangement.

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 the majority of the District Councils (namely Ashford, Canterbury, 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 21 such applications, although with 10 of these applications, the Orders have been made and confirmed and are awaiting certifications following the completion of the works on site.

3.5 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/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**

4. 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 2016 to March 2017, 37 Deposits have been received, which is an increase of 19 from the previous year.

### **Legislative Update**

5. Deregulation Act 2015 - It was reported at the last annual update that the regulations would be published towards the end of 2016; unfortunately this did not happen and at this stage Defra have not given a date of when they will be published. Indeed, they have indicated that they will not be providing possible dates for when they will be implemented. The potential impacts on the Public Rights of Way & Access Service will be better understood when the regulations are published. However, the main user groups, i.e. the Ramblers and the British Horse Society are preparing for the regulations and in particular the bringing into force of the 2026 cut-off-date. This is where all unrecorded rights of way created before 1949 will be extinguished immediately after 1 January 2026 – subject to certain exceptions:-

- It provides for Local Authority's to designate a right of way for protection during a short window after the cut-off – a one year period.
- It preserves routes identified on the list of streets/local street gazetteer as publicly maintainable or as private streets carrying public rights.
- It preserves rights over routes that are subject to a pending application.

5.1. The British Horse Society has already made a number of applications and many more are expected. The Ramblers are putting in place a process for their volunteers to start researching what potential applications they may submit. The backlog for section 53 applications has increased in the last year and is likely to increase further and therefore this will have to be considered when drafting the new Statement of Priorities.

### **Fees and Charges**

6. Fees and Charges for rechargeable Public Rights of Way and Access activity have recently been reviewed and were the subject of a report for decision at the Environment and Transport Cabinet Committee on 21 September 2017. A copy of the Report may be found at: -

<https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=831&MId=7546&Ver=4>

### **Public Footpath ZF5 at Faversham**

7. Following a decision of the Regulation Committee Member Panel on 22 February 2016, Orders were made to extinguish sections of Public Footpath ZF5 and to create a continuous creek side access between Crab Island and Ham Marshes. Following objections and representations to those Orders, they have been referred to the Secretary of State for determination and a Public Inquiry is scheduled to take place on 16 - 19 January 2018.

## **Applications to register Village Greens**

8. There are currently 11 outstanding applications under section 15 of the Commons Act 2006, of which 5 of these are scheduled to go before a Regulation Committee Member Panel on 23 October 2017.

## **Recommendation**

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

### **Contact Officer:**

Graham Rusling – Public Rights of Way & Access Manager  
Public Rights of Way & Access Service  
Tel: 03000 413449 - Email: [graham.rusling@kent.gov.uk](mailto:graham.rusling@kent.gov.uk)

## Update on Planning Enforcement Issues

## Item 5

Report by Head of Planning Applications Group to the Regulation Committee on 28<sup>th</sup> September 2017.

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> July 2017 Regulation Committee Meeting.
2. As part of the reporting format, alleged unauthorised sites are considered by Members as exempt items, for information purposes, strategy and endorsement. This helps to protect the content of any planning enforcement approaches being taken, which we may subsequently rely upon in court and legal actions.
3. This report summarises alleged unauthorised activity and is supported by a schedule, which is also exempt. However, a list of the cases covered in the schedule is given below under paragraph 7 of this report.

### Report Content

4. The exact content of the report will be tailored to each Meeting. In general however, it will cover planning enforcement objectives, themes and patterns of alleged contraventions. This in turn will be complemented by information on new and impending legislation and modernising proposals for the development of the service within an overall County Council vision.
5. At its core, the report will always include a series of cases which the planning enforcement team are currently investigating or acting upon. These will usually vary in their degree of complexity and challenge.
6. There is also a section on general site and compliance monitoring, incorporating the statutory chargeable element with relation to minerals development and final concluding comments.
7. The list of cases covered under the schedule, attached to Item 8 'Update of Planning Enforcement Cases' (Exempt report) are:
  - **Ashford Waste Water Treatment Works**, Canterbury Road, Bybrook, Ashford
  - **Glebe Farm**, Shadoxhurst
  - **Lenham Saw Mills**, Double Quick Farm, Lenham Heath
  - **Hoath Primary School**, School Lane, Hoath.

- **Dartford Technology College**, Heath Lane, Dartford
  - **Wilmington Academy**, Common Lane, Wilmington, Dartford
  - **Wentworth Primary School**, Wentworth Drive, Dartford
  - **Land adjoining Long Hill playing field**, Romans Road, Dover
  - **Reserved land to protect highway widening corridor**, Downs Road, Studdal
  - **Longton Wood**, Detling Maidstone
  - **Water Lane / Moat Road**, Headcorn, Maidstone
  - **Little Neverend Farm**, Pye Corner, Ulcombe.
  - **Land at Crockenhill**, Sevenaoks
  - **Thirwell Farm**, Drove Lane, Hernhill
  - **Land at Sites A and C**, Oare Creek, Faversham
  - **Willow Farm Equestrian Centre**, Hanslett Lane, Faversham
  - **Land adjoining White Leaf Riding Stables**, Teynham
  - **Corio Farm, Wateringbury Road**, East Malling
  - **Spratling Court Farm**, Spratling Street, Manston
8. The above represents the core and current workload of the Planning Enforcement Team but is not exhaustive in terms of advice given to other regulatory authorities and cases investigated, which are ultimately not for this Authority. Particular cases though of interest to local County Councillors will still be included.

### **Meeting Enforcement Objectives**

#### *Background*

9. As stated in my report to the last Committee, there is a high Member and public expectation for this Authority to act in a proportionate but decisive way against alleged County Matter breaches.
10. In this context and for the benefit of new Committee Members, the County Council has policies within its adopted Minerals & Waste Local Plan which are particularly relevant to the planning enforcement arena. I would draw attention to two of them:

## Update on Planning Enforcement Issues

## Item 5

- **Policy CSW3** 'Waste Reduction' – This seeks the minimisation of construction spoil at source, as an example of positive development management. This in turn should help 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 seeks to reinforce the County Council's position in any formal actions (see second attached extract).

### *Operational matters*

11. Work within the planning enforcement field requires an exacting level of information on any alleged breach and increasingly robust evidence as cases develop. This demands an exact site location, planning history and knowing and understanding the full extent of district level involvement in a case to date, in the more complex cases. Counsel will in turn need this to assist with all aspects of an alleged contravention including issues of jurisdiction. In this context, cases need to be dissected and planning and legal judgements applied, including the latest case law.
12. Once the planning status of an activity is determined, information can be given to the complainant(s), at the same time appraising our partner authorities on our findings, for team regulatory purposes. New technology such as the setting of site boundaries / ground footprints by global positioning systems (GPS) is of use, especially as a basis for drone surveys. Smart water to trace waste from '*cradle to grave*' is also available to some of our enforcement partners to use.

### *The proliferation of waste crime*

13. Our normal planning enforcement workload is continuing but waste crime is becoming increasingly evident and more organised. A key aspect since its introduction in 1996 is the alleged evasion of Landfill Tax. New forms of enforcement collaboration with other bodies and the inventive use of existing powers are being urgently devised and worked upon. The Government are also alive to this issue. Up-to-date information and training on the powers available to complement our planning enforcement efforts are an ongoing requirement. More detail on this aspect is given within Exempt Item 8 of these papers.

## **Achievements / Successes**

14. **Aylesham Road, Dover** - is an example of a recent team success which deserves recognition. A regulatory team of County and District Council officers was formed to stop flytipping in the vicinity, to clear and restore the damaged site and ensure that those allegedly responsible were brought to court. Dover DC brought a prosecution on behalf of the team. Deterrent sanctions were imposed, including suspended prison sentences, community service orders, fines and confiscation of vehicles. This successful intervention serves as a useful template for similar actions.

## **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 Meeting some 16 visits to date have been undertaken. These provide a useful means for checking compliance on site.

**Resolved or mainly resolved cases requiring monitoring**

16. Alongside the above 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 continuing within its traditional role but also keeping an open mind on new ways to achieve even more effective and cost efficient outcomes. The interchange of high quality and up to date information is vital in ensuring the success of any single or joint action. Even establishing planning jurisdiction on enforcement cases between the County Council and its district counterparts can be an involved process but is crucial to the handling and success of a case. However, if any action is contemplated, unfailing planning precision is required in all cases. These operational demands need to be set against the understandable and urgent expectations of the public, in providing an efficient and effective enforcement service.

**Recommendation**

18. I RECOMMEND that MEMBERS NOTE & ENDORSE:

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

Case Officers: KCC Planning Enforcement

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 8

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

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