

## **REGULATION COMMITTEE**

**Tuesday, 23rd January, 2018**

**10.00 am**

Council Chamber, Sessions House, County Hall,  
Maidstone





## AGENDA

### REGULATION COMMITTEE

**Tuesday, 23rd January, 2018, 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 (14)**

Conservative (12): Mr A H T Bowles (Chairman), Mr S C Manion (Vice-Chairman), 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 (Pages 5 - 16)
  - (a) Committee: 28 September 2017
  - (b) Member Panel: 23 October 2017
4. Home to School Transport Appeals Update (Pages 17 - 28)
5. Update on Planning Enforcement Issues (Pages 29 - 32)
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 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)*

8. Update on Planning Enforcement issues (Pages 33 - 52)

Benjamin Watts  
General Counsel  
03000 416814

**Monday, 15 January 2018**

*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 Thursday, 28 September 2017.

PRESENT: Mr A H T Bowles (Chairman), Mr I S Chittenden, Mr P M Harman, Mr P J Homewood, Mr R A Marsh, Mr D Murphy, Mr J M Ozog, Mr R A Pascoe, Mrs S Prendergast (Substitute for Mr K Gregory) and Mr A M Ridgers

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

**15. Minutes - 26 July 2017**  
*(Item 3)*

RESOLVED that the Minutes of the meeting held on 26 July 2017 are correctly recorded and that they be signed by the Chairman.

**16. Update from the Definitive Map Team**  
*(Item 4)*

(1) The Public Rights of Way and Access Manager summarised the current position in respect of applications to amend the Definitive Map and Statement. The report also included an update on the progress of the Deregulation Act 2015 and the outstanding Village Green applications.

(2) The Committee noted that a meeting of the Member Panel was due to be held on 23 October 2017. The Democratic Services Officer undertook to send all Committee Members an electronic set of papers for information.

(3) RESOLVED that the contents of the report be noted.

**17. Update on Planning Enforcement Issues**  
*(Item 5)*

(1) The Head of Planning Applications Group gave an update on planning enforcement matters since the Committee meeting on 26 July 2017. This included an update on waste crime where it was noted that the Government was considering introducing new legislation to combat its proliferation.

- (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.)*

**18. Update on Planning Enforcement Cases**  
*(Item 8)*

(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 Spratling Court Farm, Manston; Ashford Waste Water Treatment Works, Ashford; Lenham Saw Mills; Hoath Primary School; Dartford Technology College; Wilmington Academy; Crockenhill, Sevenoaks; Wentworth Primary School; Roman Road, Dover; Downs Road, Studdal; Stockbury Valley, Stockbury; Water Lane/Moat Road, Headcorn; Glebe Farm, Shadoxhurst; Little Neverend Farm, Ulcombe; Thirwell Farm, Hernhill; Oare Creek, Faversham; Willow Farm, Faversham; Land adjoining White Leaf Riding Stables, Teynham; and Corio Farm, East Malling.

(2) The Committee noted that the Local Member in respect of Lenham Saw Mills was Mr C Simkins rather than Mrs S Prendergast.

(3) During discussion of these cases, the Committee agreed additional actions in respect of various sites as set out in (4) below.

(4) RESOLVED that the enforcement strategies outlined in paragraphs 3 to 21 of the report and in the Schedule appended to the report be endorsed subject to: -

- (a) additional options being explored to help identify the alleged contraveners involved in depositing at Site 8;
- (b) appropriate support and evidence being provided to the public inquiry regarding the recently appealed enforcement notice at Site 10; and
- (c) continued monitoring and reports to the Committee on the case at Site 11.

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## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Council Chamber, Sessions House, County Hall, Maidstone on Monday, 23 October 2017.

PRESENT: Mr A H T Bowles (Chairman), Mr I S Chittenden, Mr P J Homewood, Mr R A Pascoe and Mr A M Ridgers

ALSO PRESENT: Mr R A Marsh

IN ATTENDANCE: Ms M McNeir (Public Rights Of Way and Commons Registration Officer), Mr C Wade (Countryside Access Principal Case Officer) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

**2. Applications to register land at Cryalls Lane at Sittingbourne as a new Village Green  
(Item 3)**

(1) The Chairman informed the Panel that he was the leader of Swale BC. He had not participated in any discussion on this application and was able to approach its determination with a fresh mind.

(2) The Commons Registration Officer began her presentation by saying that there had been two applications under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014 by Mr M Baldock. The first application had been made on 25 March 2013, and the second on 30 October 2015.

(3) The Commons Registration Officer went on to say that as a result of the Growth and Infrastructure Act 2013, the County Council was required to write to the relevant planning authorities in order to ascertain whether the application site was affected by development or a “trigger event” (with no corresponding “terminating event”). If so, the County Council would be unable to entertain the application. Upon receipt of the first application, all planning authorities (including Swale BC) had confirmed that the site was not subject to any “trigger events.” The County Council had therefore published notice of the application.

(4) During the consultation process, the landowners’ representative had noted that the site had been identified in the draft Local Plan by Swale BC, which meant that it was the subject of a “trigger event. This was confirmed by Swale BC, who had also confirmed that the land allocation had been deleted on 20 February 2014. The advice from Kent Legal Services was that the first application should be rejected as there was a trigger event affecting the site on the date of application.

(5) There had been no “trigger event” in place when the second application was submitted on 30 October 2015. This was despite the fact that an application for planning permission had been received for a change of use of the land. This application was not published until 27 November 2015, which was after the date of application.

(6) The Commons Registration Officer went on to consider the second application in the light of the legal tests. The first of these was whether use of the site had been “as of right.” The main objector had asserted that a ditch had been constructed along Cryalls Lane in 2004 and that 2 notices had been erected along Cryalls Lane in 2003. They had been unable to provide photographic evidence to this effect. The applicant on the other hand, did not accept that use of the site had been challenged in any way during the qualifying period. .

(7) The Commons Registration Officer turned to the question of whether the land had been used for purposes of lawful sports and pastimes. She said that this was a question where there was a conflict of evidence. The user evidence stated that activities included walking (with or without dogs), fruit picking, picnics and playing with children. The landowners claimed that due to its overgrown state, use would have necessarily been limited to worn paths and tracks and that, in consequence, use would have been limited to walking a linear route. Such use would not qualify as “lawful sports and pastimes. The applicant, on the other hand, disputed that the land was largely inaccessible and argued that even though the land may have been overgrown at some points, this did not prevent some of the activities he was relying upon. The Commons Registration Officer said that more detailed examination was required before a conclusion could be reached on this point.

(8) In respect of the third test (whether use has been by a significant number of inhabitants of a particular locality or a neighbourhood within a locality) the Commons Registration Officer said that the applicant was claiming that the neighbourhood was the New Zealand Estate within the Parish of Borden. This appeared to be a qualifying neighbourhood. The question of whether use had been by a significant number of people from this neighbourhood was less clear as it would need to be demonstrated that use had been by a sufficient number of people to indicate to the landowner that the site was in general use by the community for recreational purposes. It was difficult to reach a definite conclusion on this question, especially when bearing in mind that the nature of the stated use was open to interpretation at this stage.

(9) The Commons Registration Officer said that the last two tests (whether use had continued up to the date of the application and had taken place for a twenty period) were both met, subject to the caveats set out during consideration of the first three.

(10) The Commons Registration Officer concluded her presentation by saying that it was very difficult to assess the evidence on paper and that she recommended that the issues should be clarified by reference to a non-statutory Public Inquiry.

(11) The Chairman informed the Panel of correspondence from the Local Member, Mr M J Whiting who fully supported the recommendations.

(12) Mr Mike Baldock (applicant) said that he considered the evidence to be clear. No photographic evidence had been produced by the landowners in support of their contention that they had constructed a ditch and erected notices. It would be impossible for the community to provide such evidence to demonstrate that these had never been installed. He nevertheless welcomed the recommended course of action, particularly in the light of statements made about him and officers from Swale BC.

(13) Mr Carl Bennett (UK Power Networks) said that his interest in this matter was to ask whether it would be possible, in the event of Village Green status being agreed, to incorporate easement which would enable his company to carry out essential maintenance work on the land in question.

(14) Caroline Drury (Francis Taylor Building) spoke briefly on behalf of the landowner, Barratt Homes. She said that the recommendation was the entirely appropriate way to proceed.

(15) On being put to the vote, the recommendations were unanimously agreed.

(16) RESOLVED that:-

- (a) the original application be rejected; and
- (b) a non-statutory Public Inquiry be held into the resubmitted application (made on 30 October 2015) to clarify the issues.

**3. Application to register land at Grove Park Avenue at Sittingbourne as a new Village Green**  
*(Item 4)*

(1) The Chairman informed the Panel that he was the leader of Swale BC. He had not participated in any discussion on this application and was able to approach its determination with a fresh mind.

(2) The Commons Registration Officer began her presentation by saying that the application had been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014 by Mr M Baldock. It had been accompanied by 13 user evidence questionnaires and support from Borden PC on the basis that the land had been used for recreational purposes for at least 40 years.

(3) The Commons Registration Officer went on to say that as a result of the Growth and Infrastructure Act 2013, the County Council was required to write to the relevant planning authorities in order to ascertain whether the application site was affected by development or a "trigger event" (with no corresponding "terminating event"). If so, the County Council would be unable to entertain the

application. Swale BC had advised that the site had been identified in the emerging Swale Local Plan as “a transport issue requiring further consideration.” They had provided a plan which showed potential improvements highway developments proposed by the developer affecting a strip of land on the western strip of the site bordering Wises Lane. This land had not been the subject of any transport assessment and had not been agreed with either the Borough Council or Kent Highways.

(4) The advice from Kent Legal Services was that that as the land was only identified for potential development and as the plan had not been formally agreed, the information available was too uncertain to positively conclude that the land had actually been identified for development and that therefore, the “trigger event had not occurred. The Village Green application had consequently been accepted for consideration.

(5) The Commons Registration Officer informed the Panel that Swale BC had objected to the application because of its concerns over the impact on future development. She explained that this was not a consideration that could affect the determination of the application. The only issue in the County Council’s remit was whether the application met the legal tests for registration.

(6) The Commons Registration Officer went on to consider the application in the light of the legal tests. The first of these was whether use of the site had been “as of right.” The objectors claimed that the site was incapable of registration because it comprised highway land. This had been confirmed by a covering letter from Kent Highways Services, which also contained a disclaimer to the effect that they could not guarantee the complete accuracy of their reply. She said that it was therefore necessary to establish whether it was indeed Highways land and, if so, the nature of the recreational use on it. Was the land in recreational use or was it simply the case that the right of passage was being exercised.

(7) The Commons Registration Officer continued by referring to the *Cheshire East* case where the judge had concluded that an application to register two verges between the tarmacked surface in all probability concerned highway lands and that the applicant should be entitled to explore the question of what evidence supported its registration. This meant that there was nothing in Law to prevent highway land being a Village Green. It was therefore necessary to filter out the different uses in order to be able to establish whether use of the land had been “as of right.”

(8) The Commons Registration Officer turned to the question of whether the land had been used for purposes of lawful sports and pastimes. The user evidence stated that activities included dog walking, children playing, ball games, picnics and bird watching. The evidence therefore appeared to constitute qualifying use for lawful sports and pastimes. Representations made at a public inquiry would assist in establishing the nature of this use in the light of the possible highways status of the land.

(9) In respect of the third test (whether use has been by a significant number of inhabitants of a particular locality or a neighbourhood within a locality) the Commons Registration Officer said that the applicant was claiming that the

neighbourhood was Grove Park Avenue in the locality of the parish of Borden. Whilst Borden Parish clearly constituted a locality, the question was whether Grove Park Avenue as a single street could be said to constitute a neighbourhood. This question could not be answered on the basis of the evidence currently available. There was a need for further information to be gathered and tested. In respect of whether a significant number of residents had used the land, it appeared from the evidence forms that such use had been sufficient to indicate that the land was in general use by the community.

(10) The Commons Registration Officer said that the last two tests (whether use had continued up to the date of the application and had taken place for a twenty period) were both met.

(11) The Commons Registration Officer concluded her presentation by saying that it was very difficult to assess the evidence on paper, having regard to the *Cheshire East* case. She recommended that the issues should be clarified by reference to a non-statutory Public Inquiry.

(12) The Chairman informed the Panel of correspondence from the Local Member, Mr M J Whiting who fully supported the recommendations.

(13) Mr Mike Baldock (applicant) said that he believed that the arguments used by the objectors were desperate in nature and that they had foisted a non-statutory public inquiry upon the County Council. He considered that the only matter of contention was whether Grove Park Avenue could be considered to be a neighbourhood within a locality. There was, however, no other alternative means of describing the locality.

(14) Mr Hamish Buttle (Quinn Estates Ltd) said that the objectors maintained their objection because the area was critical for their planned development. He agreed with the evidence provided by Swale BC in respect of a “trigger event” having taken place.

(15) On being put to the vote, the recommendations were unanimously agreed.

(16) RESOLVED that a non-statutory Public Inquiry be held to clarify the issues.

**4. Application to register land known as Church Green at Westwell as a new Village Green  
(Item 5)**

(1) The Commons Registration Officer reported that the application had been made by Westwell PC under section 15 of the Commons Act 2006 and the

Commons Registration (England) Regulations 2014. She added that the Local Member, Mr C Simkins had expressed his full support for the application.

(2) The Commons Registration Officer then informed the Panel that the site was unregistered with the Land Registry and that no communication had been received from anyone claiming to be the Landowner. This did not mean that the application would necessarily succeed as the legal tests all needed to be met.

(3) The Commons Registration Officer briefly explained that that all the tests had indeed been met. The land had clearly been used as of right as no one had ever challenged this use. Amongst the lawful sports and pastimes identified were dog walking, conker gathering, community bulb planting and Christmas carols. The site had been used on regular occasions by enough residents of the civil parish of Westwell to demonstrate that it was in use by a significant number of its inhabitants. Use had been for over twenty years and had continued up to the date of application. She therefore recommended that the land should be registered as a Village Green.

(4) On being put to the vote, the recommendations were unanimously agreed.

(5) RESOLVED that the applicant be informed that the application to register land known as Church Green at Westwell as a new Town or Village Green has been accepted and that the land subject to the application be registered as a Village Green.

**5. Application to register land known as Rocks Close Green at East Malling as a Village Green**  
*(Item 6)*

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

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

(3) On being put to the vote the recommendations were unanimously agreed.

(4) RESOLVED that the applicant be informed that the application to register the land known as Rocks Close Green at East Malling has been accepted and that the land subject to the application be registered as a Town or Village Green.

**6. Application to register land known as Riverhead Parkland at Riverhead as a new Village Green**  
*(Item 7)*

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

(2) The Commons Registration Officer confirmed that the necessary legal tests had been met in that a Land Registration search had confirmed that the application site was for the most part owned by the Parish Council and that the qualifying locality was the civil parish of Riverhead.

(3) The Commons Registration Officer then said that it had come to light during the initial checks that two strips of land were not owned by the Parish Council. The consultation period had then brought to light that the driveways of the properties in St Mary's Drive were also not in the Parish Council's ownership. As a result, the application had been amended by the Parish Council to exclude these areas (as set out in Appendix A of the report).

- (4) On being put to the vote the recommendations were unanimously agreed.
- (5) RESOLVED that the applicant be informed that the application to register the land known as Riverhead Parkland at Riverhead has been accepted and that the land subject to the application (as amended and shown at Appendix A) be registered as a Town or Village Green.

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By: Head of Democratic Services  
To: Regulation Committee – 23 January 2018  
Subject: Home to School Transport Appeals update  
Classification: Unrestricted

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Summary: To provide Members with an overview on Home to School Transport appeal statistics for the period between 1 January 2017 to 31 December 2017 and a brief comparison with transport appeals statistics from 2010 to 2016.

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## **1. Home to School Transport Appeal Statistics 2017**

(1.1) For the period between 1 January 2017 to 31 December 2017 a total of 191 individual appeals were considered by Member Transport Appeal Panels of this Committee. 53% were upheld at least in part (e.g time limited assistance) and a breakdown of these appeals on a month by month basis is set out in Appendix 1 along with a comparison with appeals held in 2010 to 2016.

(1.2) There are a further 12 appeals that are still waiting to be heard which are scheduled for February 2018.

(1.3) It is interesting to note that in 2017 60% of the total number appeals were heard between August – 31 December 2017.

(1.4) Appeals are successful due to a variety of reasons and can include:

- Financial hardship
- Health & medical need
- No cost to the Council
- Temporary accommodation
- Family circumstances
- Circumstances of the child
- Hazardous walking route and,
- Childs safety

## **2. Transport Appeal Statistics – 2016**

(2.1) For the period between 1 January 2016 to 31 December 2016 a total of 137 appeals were considered by Transport Appeal Panels. 52% were upheld at least in part (e.g. time-limited assistance).

## **3. Local Government Ombudsman**

(3.1) If Parents remain dissatisfied and believe that they have suffered injustice as a result of maladministration by the Panel, they are advised of their rights to pursue their complaint with the Local Government Ombudsman. This is not a right of appeal and has to relate to issues such as failure to follow correct procedures or failure to act independently and fairly, rather than just that the person making the complaint believes the decision to be wrong.

(3.2) During 2017, 4 complaints were received with no faults being found. A breakdown of each report has been attached.

**4. Recommendation** Members are asked to note this report.

Appendix A – Home to School Transport appeal table

Appendix B – Local Government Ombudsman Final decision

Appendix C - Local Government Ombudsman Final decision

Appendix D - Local Government Ombudsman Final decision

Appendix E - Local Government Ombudsman Final decision

Appendix F - Local Government Ombudsman Final decision

Andrew Ballard

Principal Democratic Services Officer

Tel No: 03000 415809,e-mail: [andrew.ballard@kent.gov.uk](mailto:andrew.ballard@kent.gov.uk)

Appendix A

**TABLE 1  
HOME TO SCHOOL  
TRANSPORT APPEALS -1 JANUARY – 31 December 2017**

Month	Upheld	Not Upheld	Total Heard	% Upheld
January	6	4	10	60%
February	5	4	9	55%
March	6	11	17	35%
April	3	2	5	60%
May	4	5	9	44%
June	5	6	11	45
July	9	6	15	60
August	26	13	39	67%
September	4	15	19	21%
October	15	11	26	58%
November	13	9	22	59%
December	6	3	9	67%
<b>TOTALS</b>	<b>102</b>	<b>89</b>	<b>191</b>	<b>53%</b>

**TABLE 2  
HOME TO SCHOOL TRANSPORT APPEALS - 2010-2016**

Year	Upheld	Not Upheld	Total	% Upheld
2010	38	46	84	45%
2011	23	43	66	35%
2012	26	80	106	24%
2013	33	76	109	30%
2014	76	72	148	51%
2015	67	57	124	54%
2016	72	65	137	52%
2017	102	89	191	53%



**Complaint reference:**  
17 007 535

**Complaint against:**  
Kent County Council

## The Ombudsman's final decision

**Summary:** The Ombudsman will not investigate Mr and Mrs A's complaint that the Council was at fault in refusing their application and appeal for school transport assistance for their daughter. It is unlikely that he would identify fault on the Council's part.

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## The complaint

1. The complainants, who I will refer to as Mr and Mrs A, complain that the Council was at fault in refusing their application for school transport assistance for their daughter.

## The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe it is unlikely we would find fault. (*Local Government Act 1974, section 24A(6), as amended*)

## How I considered this complaint

3. I have considered what Mr and Mrs A have said in support of their complaint and the supporting documents they have provided. I have taken account of their response to my draft decision.

## What I found

4. Mr and Mrs A state that their son receives school transport assistance. Although the school he attends is not the closest to his home address, he qualifies because the Council was unable to place him at the school of his parents' choice or a closer alternative.
5. Mr and Mrs A's daughter is due to start school in September 2017. Mr and Mrs A applied successfully for a place for her at the school her brother attends. However, the Council refused their application for transport assistance. It explained why Mr and Mrs A's daughter does not qualify for transport assistance under its home to school transport policy. Mr and Mrs A regard the decision as unreasonable, given that their son is not attending the school of their choice.

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6. Councils have the discretion to consider exceptional circumstances and must have an appeal process by which to do so. Mr and Mrs A appealed against the Council's decision. Their appeal was considered by the Council's appeal panel.
  7. The majority of the panel decided that Mr and Mrs A's case was not so compelling as to warrant using its discretion to award transport assistance. Mr and Mrs A disagree with the panel's decision and identify what they see as fault on the panel's part. They also state that a neighbour's children have been awarded transport in what they regard as identical circumstances.
  8. The Ombudsman will not investigate Mr and Mrs A's complaint because it is unlikely he would identify fault on the Council's part. Mr and Mrs A disagree with the appeal panel's decision. But that does not provide grounds for the Ombudsman to intervene in the absence of evidence of fault.
  9. The record of the appeal hearing shows that Mr and Mrs A were able to make their case and that the panel considered it. They do not believe the Council gave sufficient weight to their case. But that is a matter for the panel, not the Ombudsman. There is no evidence of fault in the way the panel considered the matters before it.
  10. All appeals must be considered individually, and the fact that another appeal was allowed is not indicative of fault in the way Mr and Mrs A's appeal was decided. It is not likely that the alleged factual inaccuracies Mr and Mrs A have identified in the record of the hearing were decisive in the process of reaching a decision and I attach no particular significance to them.
  11. The appeal panel was entitled to make its own judgement on the evidence before it. The Ombudsman cannot criticise a decision which is properly made or intervene to substitute an alternative view.

### **Final decision**

12. The Ombudsman will not investigate Mr and Mrs A's complaint because it is unlikely he would identify fault on the Council's part.

### **Investigator's decision on behalf of the Ombudsman**

**Complaint reference:**  
17 009 324

**Complaint against:**  
Kent County Council

## The Ombudsman's final decision

**Summary:** The Ombudsman will not investigate Mr A's complaint about the Council's refusal to grant free school transport for his daughter because it is unlikely he would find fault on the Council's part.

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## The complaint

1. The complainant, who I will refer to as Mr A, complains that the Council has refused his application and appeal for free school transport assistance for his daughter.

## The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe it is unlikely we would find fault. (*Local Government Act 1974, section 24A(6), as amended*)

## How I considered this complaint

3. I have considered what Mr A has said in support of his complaint and the application and appeal documents provided by the Council.

## What I found

4. Mr A's daughter started secondary school in September 2017. His brother attends the same school and the Council provides him with free transport to school. Mr A assumed that his daughter would also qualify.
5. The Council refused Mr A's application for free school transport because his daughter does not attend the closest appropriate school to her home address. Mr A believes Council's decision is flawed because it already provides free school transport for his son and other local children who attend the school.
6. Councils must apply their school transport policy when deciding entitlement to transport assistance. However, they also have the discretion to consider exceptional circumstances and must have a review or appeal process by which to do so. Mr A appealed against the Council's decision.
7. The Council's Home to School Transport Appeal Panel heard Mr A's appeal. He attended to make his case in person and set out the difficulties an adverse

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decision would cause his family. The written record of the appeal hearing shows that the Council's representative clarified why Mr A's son had been awarded free transport and his daughter had not. The appeal panel decided not to use its discretion to award free transport and refused the appeal.

8. The Ombudsman will not investigate Mr A's complaint because it is unlikely he would identify fault on the Council's part. The Council has applied its school transport policy and there is no indication of fault in the way in it did so. Appeal panels are entitled to make their own judgements on the evidence before them. The Ombudsman cannot criticise a decision which is properly made or intervene to substitute an alternative view.

### **Final decision**

9. The Ombudsman will not investigate Mr A's complaint because it is unlikely he would find fault on the Council's part.

### **Investigator's decision on behalf of the Ombudsman**

**Complaint reference:**  
17 005 052

**Complaint against:**  
Kent County Council

## The Ombudsman's final decision

**Summary:** The Ombudsman will not investigate this complaint about the refusal of free school transport for the complainant's child. It is unlikely an investigation would find fault in the way the panel made its decision.

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## The complaint

1. The complainant, whom I will call Mr C, complains:
  - His request for free school transport for his daughter was unreasonably refused and
  - His appeal was unfair. Mr C says he could not present a proper case as the Council had not explained he needed to present his extenuating circumstances to enable the panel to override the Council's policy.

## The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe it is unlikely we would find fault. (*Local Government Act 1974, section 24A(6), as amended*)
3. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)

## How I considered this complaint

4. I considered Mr C's complaint, the papers considered by the appeal panel and correspondence between Mr C and the Council. I gave Mr C an opportunity to comment on my draft decision.

## What I found

5. Mr C applied for free school transport for his daughter. The Council turned down his application. It said the school his daughter was attending was not the nearest appropriate school. The Council's policy is that, to be eligible for free school transport, a child must attend their nearest appropriate school and live more than three miles from it.

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6. Mr C appealed the Council's decision. At the appeal panel he argued the walking route to the school was not safe, he had moved since applying for school for his daughter. He noted the nearest appropriate school was over three miles from his home. The panel turned down the appeal. It considered Mr C's case was not strong enough to outweigh the additional cost of providing free transport.
  7. Mr C complained to the Ombudsman. He said the panel had not asked if he had any extenuating circumstances to justify overriding the policy. Mr C said the Council had not made clear that he had to present such a case.
  8. The Ombudsman will not investigate Mr C's complaint because it is unlikely we would identify fault on the Council's part. When Mr C applied for school transport he ticked the box that said he had read the Council's the Home to School Transport Guidance. The Council also provided a web link to the policy when it refused his application. The policy says the appeal panel would "look at the [appellant's] specific circumstances to determine whether they are sufficiently strong to enable them to use their discretion to make an exception [to the policy]."
  9. The Council has applied its school transport policy and there is no indication of fault in the way in it did so. An appeal panel then considered the case. It decided that the original decision to refuse free school transport was correct and there were no exceptional circumstances to justify allowing the appeal. Appeal panels are entitled to make their own judgements on the evidence before them. The Ombudsman cannot criticise a decision which is properly made or intervene to substitute an alternative view.

## **Final decision**

10. The Ombudsman will not investigate this complaint. It is unlikely an investigation would find fault.

## **Investigator's decision on behalf of the Ombudsman**

**Complaint reference:**  
17 008 410

**Complaint against:**  
Kent County Council

## The Ombudsman's final decision

**Summary:** The Ombudsman will not investigate Mr A's complaint that the Council has refused his application and appeal for school transport assistance for his daughter. It is unlikely he would find fault on the Council's part.

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### The complaint

1. The complainant, who I will refer to as Mr A, complains that the Council has refused his application and appeal for school transport assistance for his daughter.

### The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe it is unlikely we would find fault. (*Local Government Act 1974, section 24A(6), as amended*)

### How I considered this complaint

3. I have considered what Mr A has said in support of his complaint and the application and appeal documents provided by the Council. I have also considered Mr A's response to my draft decision.

### What I found

4. Mr A obtained a Year 7 school place for his daughter for September 2017 transfer. The school is not the closest school to the home address. But, as Mr A's elder daughter attends the school and is provided by the Council with a free bus pass, he expected his younger daughter to qualify. Closer schools are denominational and Mr A does not want his daughter to attend them.
5. The Council refused Mr A's application for a bus pass. It explained that its decision was based on the fact that Mr A had not chosen the nearest appropriate school for his daughter. Mr A disagrees with the decision and used his right to appeal against it.
6. The Council has shown that Mr A's daughter did not qualify for a free bus pass under its school transport policy. It was entitled to make this decision and the Ombudsman will not criticise it for doing so. However, councils have the

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discretion to consider exceptional circumstances and must have a review or appeal process by which to do so.

7. Mr A did not attend his appeal hearing and the appeal panel considered the matter in his absence. His written grounds of appeal were available to the panel members. The record of the appeal hearing shows that the panel considered his grounds but decided that they did not justify awarding a bus pass.
8. Mr A disagrees with the Council's decision but that is not, in itself, grounds for the Ombudsman to intervene. The Ombudsman will not investigate Mr A's complaint because it is unlikely he would identify fault on the Council's part. The Council has applied its school transport policy and there is no indication of fault in the way in it did so. Appeal panels are entitled to make their own judgements on the evidence before them. The Ombudsman cannot criticise a decision which is properly made or intervene to substitute an alternative view.
9. Mr A has identified what he sees as an inaccuracy in the record of the appeal hearing. He says the Council officer gave inaccurate information about the 2014 decision to award his older daughter school transport. He points out that transport assistance was awarded on appeal. I attach no significance to this. The question for the panel was whether there were grounds to award Mr A's younger daughter transport assistance. There is no indication of fault in the way they made this decision.
10. Mr A also points out that, if he had sent his daughter to a closer school, she would have been entitled to transport assistance due to the walking distance. This is not directly relevant to the questions before the panel and does not bring their decision into question.

## **Final decision**

11. The Ombudsman will not investigate Mr A's complaint because it is unlikely he would find fault on the Council's part.

## **Investigator's decision on behalf of the Ombudsman**

**Update on Planning Enforcement Issues****Item 5**

Report by Head of Planning Applications Group to the Regulation Committee on 23<sup>rd</sup> January 2018.

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 28<sup>th</sup> September 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. This report to each Regulation Committee seeks to cover planning enforcement objectives, themes and the patterns of alleged contraventions. This in turn is complemented by information on new and impending legislation and modernising proposals for the development of the service within the overall vision and values of the County Council.
5. The report includes a series of cases which the planning enforcement team are currently investigating or acting upon. These 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
  - **Casa Amica & Ripley's Auto Spares Ltd**, Bilsington, Ashford
  - **Lenham Saw Mills**, Double Quick Farm, Lenham Heath

## **Update on Planning Enforcement Issues**

**Item 5**

- **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
  - **Land at Stockbury Valley (Longton Wood)**, Detling Maidstone
  - **Water Lane / Moat Road**, Headcorn, Maidstone
  - **Little Neverend Farm**, Pye Corner, Ulcombe.
  - **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
  - **Three Lakes Caravan Park**, Murston, Sittingbourne
  - **Corio Farm, Wateringbury Road**, East Malling
  - **Spratling Court Farm**, Spratling Street, Manston
8. The above represents the current case 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.

## **Meeting Enforcement Objectives**

### *Background*

9. Understandably, there is always a high Member and public expectation for this Authority to act in a proportionate but decisive way against alleged planning breaches.

### *Operational matters*

10. Planning enforcement is a diverse field of work, with cases needing to be dealt with on their own individual merits. Precision is required in making any assessment of alleged contravening activities, against planning policy and guidance. This information in turn has to be based on the facts and degree of cases and in the context of planning and legal judgements. This in turn demands at its core, precise and accurate information and

## **Update on Planning Enforcement Issues**

**Item 5**

measured involvement in cases. Indeed, the research element of the work and filtering of cases, although both largely unseen are of underlying importance and demanding in their own right.

### *The proliferation of waste crime*

11. Waste crime continues to be a prominent feature of our workload and it is apparent that it is increasingly more organised. A key aspect since its introduction in 1996 is the alleged evasion of Landfill Tax. The Government are currently seeking to address the alleged expansive nature of this problem, through new tax measures proposed for introduction on 1<sup>st</sup> April 2018. Enforcement collaboration with other bodies and the inventive use of existing powers (connected together in different ways) are being urgently devised and worked upon by the Planning Enforcement Team. More detail on this aspect is given within Exempt Item 8 of these papers.

## **Monitoring**

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

12. 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. They are useful compliance checks against each operational activity.

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

13. 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**

14. The County Planning Enforcement Team is continuing to service a wide and challenging workload. This in turn needs to be conducted in an effective and cost efficient way. In researching cases and particularly if any action is contemplated, unfailing planning precision is required at all stages. All interventions may be subject to court challenge and this possibility has to be factored into the structure and execution of any action. This in turn however, needs to be balanced against the understandable and urgent expectations of the public and Members for early and decisive action.

## **Recommendation**

15. I RECOMMEND that MEMBERS NOTE & ENDORSE:

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

## **Update on Planning Enforcement Issues**

**Item 5**

Background Documents: see heading.

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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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