

REGULATION COMMITTEE

Wednesday, 26th July, 2017

11.00 am

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

**There will be a training session for Members of the
Committee at 10.00am by the Planning Enforcement and
Public Rights of Way/ Village Green Teams.**





AGENDA

REGULATION COMMITTEE

Wednesday, 26th July, 2017, at 11.00 am Ask for: **Andrew Tait**
Council Chamber, Sessions House, County Telephone: **03000 416749**
Hall, Maidstone

Tea/Coffee will be available from 9.45 am.

Membership (12)

Conservative (10): Mr A H T Bowles (Chairman), 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 and Mr A M Ridgers

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. Election of Vice-Chairman
3. Declarations of Interests by Members in items on the Agenda for this meeting.
4. Terms of Reference and dates of future meetings (Pages 5 - 6)
5. Minutes (Pages 7 - 24)
 - (a) Committee: 24 January 2017;
15 February 2017;
25 May 2017
 - (b) Member Panel: 1 March 2017
 - (c) Mental Health Guardianship Sub-Committee
6. Update on Planning Enforcement Issues (Pages 25 - 30)
7. Other Items which the Chairman decides are Urgent
8. 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)

9. Update on Planning Enforcement cases (Pages 31 - 50)

John Lynch
Head of Democratic Services
03000 410466

Tuesday, 18 July 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.

By: Head of Democratic Services

To: Regulation Committee – Wednesday, 26 July 2017

Subject: TERMS OF REFERENCE AND DATES OF FUTURE MEETINGS

Classification Unrestricted

FOR INFORMATION

1. The Regulation Committee's Terms of Reference are set out below. It should be noted that the version that currently appears in the published Constitution will be amended by the deletion of the section which refers to Gating Orders as this power has been transferred to Borough and District Councils by section 185 of the Anti-social Behaviour, Crime and Policing Act 2014. Section (b) has also been updated in the light of the most recent Commons Registration (England) Regulations.

2. REGULATION COMMITTEE

12 Members

Conservative: 10; Liberal Democrat: 1; Independents: 1

This Committee is responsible for the Council's functions in relation to the enforcement of the control of development under the Town and Country Planning Act 1990 and related statutory instruments and may exercise any of the powers of the County Council in Part A of the Schedule to Appendix 2 Part 3 of the Constitution.

The Committee also considers:-

- (a) appeals against refusal to approve premises for the solemnisation of marriages (or the attachment of a condition to such an approval);
- (b) all Commons Registration functions under Part 1 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014;
- (c) the creation, stopping up, diversion of any footpath or bridleway or restricted byway or the reclassification of any public path where substantive objection has been raised by a political party or the Local Member requests;

(The Council agreed on 20 September 2001 that functions (a) to (c) could be delegated to sub-committees)

- (d) reports of Kent County Council's work with the Environment Agency;
- (e) appeals by pupils and parents against school-related decisions that are not considered by an external Appeal Committee including transport, education awards and religious education. Such appeals to be dealt with by ad hoc sub-committees of Members (Panels) chaired by and including at least one member of the Regulation Committee. All Panel Members must have received appropriate training before taking up their positions.

- (f) the discharge of persons who are subject to guardianship, pursuant to section 23 of the Mental Health Act 1983 on the recommendation of the Director of Disabled Children, Adult Learning Disability and Mental Health.

(The Council agreed on 13 May 2010 that function (f) could be delegated to a sub-committee (the Mental Health Guardianship Sub-Committee) of at least three members, one of whom should be a Member of the Regulation Committee and the others to be Members of the Adult Social care Cabinet Committee (who must not also be members of an NHS Foundation trust). The decision to discharge must be agreed by at least three Members or where there are more Members on the sub-committee by a majority of the Panel).

3. Dates of Future meetings.

- 3.1 The next meetings of the Committee will be held on:

Thursday, 28 September 2017
Tuesday, 23 January 2018

RECOMMENDATIONS:

4. The Committee is recommended to note its Terms of Reference and future meeting dates.

Officer Contact: Andrew Tait
Committee Officer
03000 416749

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, 24 January 2017.

PRESENT: Mr A H T Bowles (Chairman) Mr S C Manion (Vice-Chairman)
Mr H Birkby, Mr L Burgess, Mr G Cowan, Mr A D Crowther, Mrs V J Dagger,
Mr J A Davies, Mr P M Harman, Mr M J Harrison, Mr P J Homewood, Mr J M Ozog,
Mr C Simkins and Mr J N Wedgbury

ALSO PRESENT: Mr A Terry and Mrs J Whittle

IN ATTENDANCE: Mr S Bagshaw (Head of Fair Access), Mr A Ballard (Principal Democratic Services Officer), Mrs S Thompson (Head of Planning Applications Group), Mr R Gregory (Team Leader - Planning Enforcement) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

1. Membership

(Item 1)

(1) The Committee noted that Mr C W Caller was no longer a Member of the Committee.

2. Minutes - 13 September 2016

(Item 4)

RESOLVED that the Minutes of the meeting held on 13 September 2017 are correctly recorded and that they be signed by the Chairman.

3. Home to School Transport Appeals Update

(Item 5)

(1) The Committee considered a report which gave an overview of Home to School Transport appeal statistics for the period between 1 January 2016 and 31 December 2016 with a brief comparison with the statistics for the years 2010 to 2015.

(2) The Head of Fair Access agreed to reply to a question from Mr Wedgbury. The Committee asked for the response to be minuted. This response is set out below:-

Dear Mr Wedgbury,

Further to your question at the Regulation Committee meeting in regard to whether KCC applies the legal position in regard to transport assessments for children with SEN or whether a more lenient approach is taken, I can confirm that each child is assessed based on their individual needs and this is in line with our legal responsibilities.

You will appreciate that it is not an exact science as every child is different. In making any assessment in relation to eligibility, in exactly the same way as for mainstream learners, in the first instance it is established whether the child is attending their nearest appropriate school and whether they live beyond the statutory distance from that school.

In some instances a child may be placed in a school that is not their nearest appropriate due to this being full and outside of the parents' control. In such circumstances the LA retains responsibility for enabling the child to access school. In other instances a parent may request an alternative school to the one SEN Officers consider the nearest appropriate. If there is no additional cost associated with this educational placement, parental preference must be satisfied where possible. However in choosing a school further away from their nearest appropriate, the family forgoes any eligibility for transport assistance and the family must make the necessary arrangements for their child to access school.

Unlike with mainstream pupils, there may be instances where the disability or SEN condition makes it unsafe to expect the child to walk accompanied as necessary, even where they live inside the statutory distance to the school. If this can be demonstrated through professional assessment there may be a requirement on the LA to provide assistance even though the child might appear to be within a reasonable walking distance.

If you have specific examples where you or your constituents consider that there has been some error in the way that transport has been assessed or indeed that there may be children accessing transport where it appears that they should not be eligible for assistance, I would be happy to investigate such occasions thoroughly even where names are provided anonymously. We endeavour to apply the policy consistently and in an open and transparent way. If a family's circumstances change they are required to inform the LA and we will undertake a review of eligibility based on the new circumstances.

(3) RESOLVED that the report be noted.

4. Update on Planning Enforcement Issues (Item 6)

(1) The Head of Planning Applications Group gave an update on planning enforcement matters since the last meeting of the Committee. She informed the Committee that the number of cases involving the Enforcement Team had increased, particularly in the Boroughs of Maidstone and Swale.

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

EXEMPT ITEMS

(Open Access to Minutes)

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

5. Update on Planning Enforcement cases

(Item 9)

(1) Mrs J Whittle and Mr A Terry were present for this item pursuant to Committee Procedure Rule 2.27 and spoke.

(2) Correspondence from Ms Carol Willett in respect of the issues at Downs Road, Studdal was tabled at the meeting.

(3) 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; Larkey Wood, Chartham; Dartford Technology College; Long Hill Playing Field, Dover; Aylesham Road, Dover; Downs Road, Studdal; Apex Business Park, Gravesend; Malling Wood, Boxley; Longton Woods, Stockbury; Water Lane, Headcorn; Crockenhill, Sevenoaks; Willow Farm Equestrian Centre, Faversham; White Leaf Riding Stables, Teynham; Homestall Road, Newnham; Spratling Court Farm, Ramsgate; and Stone Bay School, Broadstairs.

(4) RESOLVED that:-

- (a) endorsement be given to the enforcement strategies set out in paragraphs 3 to 15 of the report and its appended schedule; and
- (b) the Committee's appreciation of the work undertaken over many years by the Enforcement Team in respect of Larkey Wood, Chartham be recorded.

6. Update on Planning Enforcement issues at Land adjoining Pit Stop Cafe, Dargate

(Item 10)

(1) The Team Leader – Planning Enforcement updated the Committee on planning enforcement issues at Pit Stop Cafe, Dargate. He explained that Swale BC had retrospectively granted permission for the retention of the materials on site for the development of a lorry park and set out the enforcement implications of that decision.

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

7. Update on Planning Enforcement issues at Thirwell Farm, Hernhill

(Item 11)

(1) The Team Leader - Planning Enforcement updated the Committee on planning enforcement issues at Thirwell Farm, Hernhill.

- (2) RESOLVED that the enforcement strategy set out in paragraphs 5 to 12 of the report be endorsed; and

KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Wednesday, 15 February 2017.

PRESENT: Mr A H T Bowles (Chairman) Mr S C Manion (Vice-Chairman)
Mr H Birkby, Mr D L Brazier (Substitute for Mr J N Wedgbury), Mr A D Crowther
(Substitute for Mr L Burgess), Mrs V J Dagger, Mr T A Maddison, Mr R A Marsh
(Substitute for Mr M J Harrison) and Mr C Simkins

ALSO PRESENT: Mrs J Whittle

IN ATTENDANCE: Mrs S Thompson (Head of Planning Applications Group),
Mr R Gregory (Team Leader - Planning Enforcement), Ms A Gerzon (Solicitor) and
Mr A Tait (Democratic Services Officer)

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.)

8. Update on Planning Enforcement issues at Land adjoining Water Lane, Headcorn *(Item 4)*

(1) Mrs J Whittle was present for this item pursuant to Committee Procedure Rule 2.27 and spoke.

(2) The Head of Planning Applications Group informed the Committee that a request had been received from Maidstone BC in respect of planning enforcement issues at Water Lane, Headcorn which according to Appendix 2 Parts 2 and 3 of the Constitution could only be considered by the Committee itself.

(3) The Head of Planning Applications Group explained the circumstances which had led to Maidstone BC's request and recommended that regretfully, for the reasons set out in the report and supported by advice recently received from Counsel, such action would not be appropriate.

(4) In the light of comments made by Members of the Committee and representations from Mrs J Whittle (Local Member), the Committee unanimously agreed the resolution set out in (5) below.

(5) RESOLVED that:-

- (a) approval be given to the enforcement strategy outlined in paragraphs 6 to 27 of the report;
- (b) the Head of Planning Applications Group be given delegated powers in consultation with the Chairman to progress the County Council's response to the planning enforcement issues at Water Lane, Headcorn with the exception of actions specifically reserved to the Committee within the Constitution; and
- (c) the Chairman write on the Committee's behalf to the Leader and Chief Executive of Maidstone BC explaining the reasons that it would not be appropriate for the County Council to take the action requested by the Borough Council. A copy of this letter will be sent to all Members of the Committee, Helen Whately MP, and the Local Member.

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Thursday, 25 May 2017.

PRESENT: Mr A H T Bowles, Mr I S Chittenden, Mr K Gregory, Ms S Hamilton, Mr P M Harman, Mr P J Homewood, Mr R A Marsh, Mr D Murphy, Mr J M Ozog, Mr R A Pascoe and Mr A M Ridgers

UNRESTRICTED ITEMS

9. Election of Chairman

(Item 3)

(1) It was duly proposed and seconded that Mr A H T Bowles be elected Chairman of the Committee.

Carried

(2) RESOLVED that Mr A H T Bowles be elected Chairman of the Committee.

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KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the The Hope Room, Otford Village Memorial Hall, 8 High Street, Otford TN14 5PQ on Wednesday, 1 March 2017.

PRESENT: Mr A H T Bowles (Chairman), Mr S C Manion (Vice-Chairman), Mr L Burgess, Mr T A Maddison and Mr J N Wedgbury (Substitute for Mr M J Harrison)

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

UNRESTRICTED ITEMS

1. **Application to divert Public Footpath SR49 from the at grade Foot Crossing to a stepped bridge at Otford.**
(Item 3)

(1) The Panel Members visited the site of the application prior to the meeting. They inspected the crossing point and observed the visibility lines along the railway from both sides of the track. The location of the proposed step bridge was also pointed out to them. Members then walked the route through the station car park that was intended to replace the existing footpath. The visit was attended by Nicola Mee and Gemma Kent from Network Rail, Philip Clucas and John Edwards-Winsor (Otford PC) and Barry Davies.

(2) The Definition Officer introduced the application by saying that it had been made by Network Rail in the interests of safety to remove the at grade foot crossing from the railway line and to run the path over a stepped bridge, which had already been granted planning permission.

(3) The Definition Officer then set out her findings in respect of the criteria for proposed diversions given in Section 119A of the Highways Act 1980. The first of these was whether it was expedient in the interests of the safety of users or likely users of the crossing. She said that a number of risk assessments had been undertaken by Network Rail, the most recent in October 2015. This latest risk assessment had increased the risk score from a rating of C3 (high risk) to C2 (higher risk) due to usage figures and an increase in numbers of vulnerable users. This was despite the temporary speed restriction in force limiting trains to 45 mph rather than the usual 60 mph. This temporary restriction had been imposed due to the insufficient sighting available at the level crossing. Whistle boards had previously been installed in order to mitigate the insufficient sighting at the crossing. These had been removed following a Noise Abatement Notice.

(4) The Definition Officer said that this particular crossing was ranked by Network Rail as 29th of 561 level crossings on the South East Route in terms of danger. In respect of crossings which catered for public footpaths, it ranked 1st of 278, putting it within the top 1% in the country based on Network Rail's assessment of risk. Network Rail's main concerns at this crossing were insufficient sighting, the high level of use, and evidence of misuse coupled with the high level of vulnerable users, particularly unaccompanied children and the elderly. Network Rail had provided an incident log, but these incidents were not weighted. Network Rail considered that its proposed solution of a footbridge with steps would remove the risk of serious injury to users and allow uninterrupted use.

(5) The Definition Officer then said that Network Rail had calculated that 13.5 seconds were required for vulnerable users to cross a level crossing. The traverse time was calculated based on the length of the crossing between decision points. For this crossing, this had been calculated by estimating that an average person would take 9 seconds to cross. Due to the number of vulnerable users that used the crossing an additional 50% had been added to the traverse time.

(6) The Definition Officer continued by saying that it was difficult to fully assess the safety case Network Rail had put forward. Witness statements relating to the logged incidents had therefore been requested by the County Council under the Freedom of Information Act in order to ascertain which incidents were relevant and to establish the criteria used for recording a 'near miss'. The incident that had been deemed a suicide, for example, could not be seen as relevant in this case; nor could some of the other incidents logged -such as "contractor working unsafely." Network Rail had confirmed that the only criteria for reporting a 'near miss' was if the driver considered it to be one. Network Rail had only recently responded that it did not hold the information requested. It was held instead by the British Transport Police, so a further FOI request would need to be made to them.

(7) The Definition Officer summed up her findings on this criterion by saying that there had evidently been some incidents on this level crossing, particularly in relation to misuse, although it was too difficult to accurately assess the near misses. There was an inherent risk with any level crossing, but as one of the respondents had pointed out, there was no risk when no train was present. Network Rail considered that the stepped bridge would be a safer option for the public, which would also enable uninterrupted use of the crossing. There was also an argument that a stepped bridge would be more dangerous for at least one member of the public who used the crossing regularly. However, a bridge would be much safer for those who were blind or partially-sighted, for example.

(8) The Definition Officer concluded the case was very finely balanced. Taking into account the number of trains using the line, the ever increasing speeds of those trains and the number of incidents at this crossing, she considered that, on balance, it was expedient to divert the footpath in the interests of the safety of users or likely users of the crossing.

(9) The Definition Officer turned to matters that needed to be taken into account by the Panel; even though they were not listed in the Highways Act 1980 they were included in DEFRA Guidance (*DEFRA Rights of Way Circular 1/09 paragraph 5.51*). The first of these was whether it was expedient in the interests of the safety of users or likely users of the crossing. She said that the proposed route would run over a new stepped bridge which had been granted planning permission. This bridge would have 28 steps on its eastern side with a mid way level and 34 steps on its western side with a mid-way level. The existing route had a stile and a series of approximately 6 wide-spaced steps leading to the east side of the level crossing and a stile on the west side. Network Rail had been asked if the stiles could be removed to make access easier but that they had stated that this would increase the risk to the crossing as more vulnerable users would be able to use it, further increasing its risk. This was unacceptable to Network Rail. Although not easily negotiable, it was known that some people with pushchairs used this route and would be unlikely to be able to use the stepped bridge. One local resident currently used the level crossing without issue, but would find the bridge very inconvenient and dangerous to the point where he might not be able to use it. Network Rail had stated in response that it was unable to assess the needs of individuals. Wheelchair users could not use the existing route and would not be able to use the stepped bridge either. People who were visually impaired or blind would find the bridge more convenient and easier to use. It was therefore evident that the stepped bridge would inconvenience some users of the crossing.

(10) Another criterion was the safety of the diversion, particularly where it passed along or across a vehicular highway. She said that the safety of the new route over the stepped bridge had been queried. Network Rail had been asked to provide accident statistics on its current stepped bridges (in relation to falls, etc.) so that a comparison of risk could be made. The accident statistics were set out in the papers as recorded via Network Rail's National Helpline and entered into its Safety Management Information System. It was recognised that there might have been many more incidents that had never been reported to Network Rail. There was, therefore, a concern that the proposed new route running over the stepped bridge was not significantly safer than the level crossing.

(11) The Definition Officer's overall conclusion was that the case was very finely balanced. Network Rail had a safety case and the tests under section 119A of the Highways Act 1980 had been met. On the other hand, the proposed new route ran over a high stepped bridge, which included its own risks, and would exclude some members of the public who were currently able to access the existing route. She recommended that, on balance, an Order should be made. She added that because the balance was such a fine one, this was a case where the evidence both for and against the application lent itself to being tested at a Public Inquiry. She therefore also recommended that if objections were received and the Order was submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination, the County Council should take a neutral stance at a Public Inquiry.

(12) Mr Tom Housden said that he wished to speak about Network Rail's lack of focus on disability issues. He said that Network Rail had completely ignored

the disability issues he had raised with them in their earlier public consultation meeting. These had been general points rather than ones which had been specific to him. One of these had been the need to comply with the 2010 Equality Act as well as planning regulations when seeking to change the footpath crossing. They had not produced a disability strategy document for the footbridge crossing proposal, raising doubts about Network Rail's compliance with the Act. They had, for example, always proposed access to the bridge in by steps rather than a ramp which would be far more helpful to disabled people. The issues he had raised had been wrongly dismissed by Network Rail as the concerns of one person instead of being seen as relevant to the disabled community in general as he had always intended.

(13) Mr Housden went on to consider the impact of a bridge on the safety of the disabled. He said that there were two groups of disabled people who were affected. These were blind or partially sighted people and people with mobility problems. A bridge would reduce one set of problems for people with sight problems as they would no longer have to worry about their inability to see a train coming. The proposed bridge would, however, introduce a new set of risks. People with limited or no sight would have to deal with two sets of steps, which would be risky at the best of times. They would have especial difficulty seeing a safe route if there were obstructions on the bridge or when bad weather had increased the risk of slipping on wet or icy steps. He considered that, on balance, a footbridge would not improve safety for people who were blind or partially sighted.

(14) Mr Housden said that people with mobility problems would find that a bridge would definitely increase the level of risk in comparison to the present crossing as steps could be very difficult and dangerous for them. Crossing a stile was difficult enough, but climbing two flights of stairs would be even worse.

(15) Mr Housden referred to his own case as an example of a general problem. He said that when he came home from Sevenoaks on the train, he avoided using the footbridge on the platform because he felt unstable and did not want to risk using the bridge. He would go the long way round instead, along the footpath and across the stile as this was a far safer route for him. He then referred to a letter from another local resident who had informed him that a footbridge would be far more dangerous for her than the present crossing because of her condition. This letter indicated that there were many others with mobility problems who used the present crossing. He felt that it would be wrong to make changes that reduced their safety.

(16) Mr Housden went on to speak to his third point which was that convenience was a safety issue for the disabled. He said that if disabled people with mobility problems had to walk the long way round to cross the railway line, they would be exposed to additional risks of falling. They would also need to cross a busy main road where they had to cross the road-bridge across the tracks. He asked the Panel to bear in mind that shorter routes were generally safer routes for disabled people if footbridges could be avoided. He asked the Panel to not force disabled people to walk a long way round to avoid the proposed footbridge, and to keep the crossing as it was.

(17) Mr Barry Davies spoke against the proposal. He said that he had been an Environmental Health Enforcement Officer at a London Borough. He intended to consider whether the proposal was necessary in the interests of safety, whether it was practical to make the existing crossing safer and whether the proposal would be more convenient for those who used the existing route.

(18) Mr Davies said that Network Rail's Risk Assessments scoring system was based on incidents rather than accidents. There had been no accidents over the 150 years. Some of the incidents recorded (such as children throwing stones and a suicide) had no relevance to the matter at hand. If these were discounted, the number of incidents which indicated that the crossing was dangerous was relatively small.

(19) Mr Davies then said that Network Rail had dismissed the possibility of improving safety along the line itself by, for example, installing lighting or warning systems or reducing the speed of the trains. It maintained that the current 45 mph speed limit was safe and had more recently ruled a speed reduction out because of the delays that this would cause. In his view, this particular problem could be resolved by slightly amending the timetable.

(20) Mr Davies showed the Panel a photograph of a crossing at Edenbridge and said that this had achieved all the results that Network Rail was seeking from its proposal for Otford.

(21) Mr Davies said that the low level of risk presented by the crossing could be set against the figures published by the Health and Safety Executive which indicated that there had been some 100 fatalities over the previous year as a result of falls from staircases, as well as 100,000 injuries. Of the deaths that occurred in homes, some 25% were due to falls. This demonstrated that the effect of the proposal would be to replace the low risk posed by trains with another set of hazards. People could choose not to cross the track when a train was passing, but did not have the option of choice with a bridge.

(22) Mr Davies referred to the incident reported in page 70 of the papers where 8 of the 36 steps on the footbridge over the railway line at Hounslow had been found to be defective. He said that people had noticed defects in the bridge at Otford Station.

(23) Mr Davies concluded his remarks by saying that if people chose to avoid the bridge they would also need to cross the busy road once they had done so. This would include people with pushchairs. If Network Rail's calculations were to be applied to the roads, they would identify a greater hazard than the crossing. Logically, this would mean that a bridge should be built over every road.

(24) Mr Philip Clucas said that it was Network Rail's intention to close every crossing on its lines. Its justification for wishing to do so was based on conjecture and supposition. In this case, there had been no serious injury since 1862 despite an estimated 4 million crossings being made in the last 70 years.

(25) Mr Clucas said that observations carried out on the time taken to reach the crossing after first being seen for three trains approaching the crossing from

both directions had revealed that it had taken 14, 16 and 12 seconds from the west side and 12, 13 and 18 seconds from the east. These times were far longer than claimed by Network Rail.

(26) Mr Clucas continued by saying that there would be a natural accumulation of mud, leaves and snow on the stairs and asked who would be responsible for monitoring, clearing and gritting them (KCC Highways or Network Rail). The present foot crossing was convenient and widely used. Parents of young children would be most at risk, as would the elderly (whose numbers were increasing all the time). Once they had crossed the bridge, these people would be faced with an additional 0.64 mile detour through the station forecourt and car park.

(27) Mr Clucas then said that KCC had considered the crossing to be sufficiently safe that it had funded a walking bus which used the crossing. In his view, no fair assessment of the risk had been carried out. He urged the Panel to listen to the community.

(28) Mr John Edwards-Winsor (Otford PC) said that Network Rail had not listened to the public. They had wanted a controlled crossing, but Network Rail had claimed that it would be no safer than an unmanned one. One possible improvement to help parents would be if the steps had a separate lane resembling guttering. He asked who would be responsible for replacing the worn nosing on the steps. He concluded by saying that closing the crossing was not the solution as it was so widely used. Likewise, the erection of a bridge would not solve the problem.

(29) Mrs Nicola Mee said that Network has carried out a survey over a 9 day period which had counted 1554 movements over the crossing. Of these, 348 had been children, 149 of whom had been unaccompanied. There had been 8 crossings involving push chairs and prams.

(30) Mrs Mee then said that the footbridge would have step noses of contrasting colours, hand rails, and anti-slip surfacing. It would also be possible to incorporate a cycle gutter. This meant that the bridge would be constructed to modern day standards.

(31) Mrs Mee continued that according to Network Rail statistics, there had been 12 incidents at the crossing over the previous 5 years. The concern was that an accident at the crossing would be almost certainly far more significant than an accident involving steps on the bridge. The most significant cause of risk at this crossing was its proximity to Otford Station which operated a red/green warning light system. If people saw the red warning light, they could make the mistake of believing that the red light was simply indicating that the train had stopped at the station. They would potentially have insufficient time to react.

(32) Ms Gemma Kent (Network Rail) said the Office of Rail Regulation had instructed Network Rail to reduce risk by 25% in the UK. It was not, however, Network Rail's policy that every crossing needed to be closed.

(33) Ms Kent went on to say that there had been numerous incidents where people had ignored the red light at the Otford crossing. This was particularly

worrying as it was not uncommon for a non-stopping train to pass a stopping train at Otford Station. This was one of the reasons that Network Rail had given the crossing such a high risk score. She asked the Panel to note that people had crossed the line during that morning's site visit without looking and whilst wearing headphones. She then showed the Panel a photograph taken in West Sussex of children playing on an electrified railway line near a crossing.

(34) Mrs Mee said that there had been other incidents since the application had been made in 2014. These included some 8 young people playing "chicken" at the crossing in August 2016.

(35) Mrs Mee replied to a question from Mr Maddison by saying that the bridge would not be constructed if the Diversion Order was not confirmed. This was because Network Rail would be unable to access government funding for this particular scheme as the bridge's construction would not reduce the risk score.

(36) Members of the public made various additional comments. These included the view that there should be a continuous speed restriction of 45 mph and that the risk would be further reduced if it were reduced to 30 mph; that Network Rail had given people to understand during the public meeting that they would only build the bridge if the crossing was not closed; that there had been no incidents when Eurostar had used the line for a 10 year period; and that there was no evidence that children cross the line when the red light was on.

(37) The Network Rail representatives said that the Panel should note that two lighting columns would be set up to ensure safety over the bridge and that Network Rail had considered the separate merits of diverting each of the footpaths at crossings on a case by case basis.

(38) The Panel Members moved on to discuss the application. Mr Maddison said that he did not feel that the case of safety had been made on the basis of what he had read, seen and heard. He considered that the crossing could be made safer and that there were risks associated with the proposed step bridge. These included the possibility of young people dropping things on the line from the bridge as well as the significant points made by members of the public.

(39) Mr Burgess said that he considered that he could not support the officer's recommendation because the replacement of a well-used crossing by a step bridge was unnecessary. The approach should be one of considering the safety improvements that could be made to the crossing itself.

(40) Mr Wedgbury said that, although he understood Network Rail's position and intentions, they had not been able to produce a convincing safety case for diverting the footpath onto a bridge, which brought its own safety and inconvenience issues into play.

(41) Mr Manion said that the community had made its views clear. In his view the points they had made during the meeting demonstrated that they had a clear understanding of the risks involved in both the crossing and the proposed solution. This was a view that he shared.

- (42) On being put to the vote, the Panel agreed unanimously to refuse the Order.
- (43) RESOLVED that the application to make an Order under Section 119A of the Highways Act 1980 to divert part of Public Footpath SR49 at Otford be refused as, on the evidence before the Panel, the case of safety has not been made in the light of the objections received.

REGULATION COMMITTEE MENTAL HEALTH GUARDIANSHIP SUB-COMMITTEE

MINUTES of a meeting of the Regulation Committee Mental Health Guardianship Sub-Committee held in the Darent Room, Sessions House, County Hall, Maidstone on Tuesday, 31 January 2017.

PRESENT: Mr A H T Bowles (Chairman), Mr R H Bird (Substitute for Mr S J G Koowaree), Mrs M Elenor, Ms A Harrison (Substitute for Mrs S Howes) and Mr C P Smith

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

UNRESTRICTED ITEMS

1. Minutes - 26 January 2016 *(Item 2)*

RESOLVED that the Minutes of the meeting held on 26 January 2016 are correctly recorded and that they be signed by the Chairman.
(Item 2)

2. The Local Authority's Guardianship Register *(Item 3)*

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

(2) The Head of Mental Health went on to say that the 2007 Amendments to the Act had also introduced the requirement for Elected Members to audit the effectiveness of receipt and scrutiny of documents. She moved on to say that the Officer Working Party which had been set up for this purpose had met on three occasions over the previous year

(3) The Head of Mental Health replied to a question from Mr Bird by saying that the guidance on the "Nearest Relative" (paragraph 2.6 of the report) set out in the Act and Regulations was very clear on the question of both the hierarchy which determined the identity of the "nearest relative" and the circumstances under which the Local Authority would take over this function. It was also open to the nearest relative to decide to delegate it to the County Council.

(4) The Head of Mental Health said that the most frequent use of Guardianship related to the requirement for a person to reside at a stipulated residence. It was

more likely for people with a diagnosis of mental illness to be discharged from Guardianship within a short time period once they were settled with their community care and treatment plan. People with a diagnosis of a learning disability were more likely to require the safeguards of a guardianship order for a longer length of time.

(5) During discussion, the Panel asked for future reports to include the birth years of those under a guardianship order.

(6) The Panel agreed that the proposed half day training for Panel Members would be held as part of the Member Induction programme following the Local Government elections in May 2017. Invitations would also be sent to all Members of the new Sub-Committee to sit in as observers at Guardianship Quality and Scrutiny Panel (formerly Working Party) meetings.

(7) RESOLVED that the content of the report be noted together with the list of closed cases since January 2016 (set out in Appendix 1), the current guardianship register (Appendix 2) and the activity during 2016 (Appendix 3).

Update on Planning Enforcement Issues

Item 6

Report by Head of Planning Applications Group to the Regulation Committee on 26th July 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 main 24th January and 15th February 2017 specially convened Regulation Committee Meetings.
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.
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 an established format, equipping Members with the essential facts of a series of cases, varying in their degree of complexity and challenge.
5. 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 9 (exempt report) of these papers includes:
 - **Ashford Waste Water Treatment Works**, Canterbury Road, Bybrook, Ashford
 - **Larkey Wood**, Crockinghill Lane, Chartham
 - **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.
 - **Aylesham Road, bridleway**, Dover

- **Reserved land to protect highway widening corridor**, Downs Road, Studdal
- **Longton Wood**, Stockbury Valley
- **Water Lane / Moat Road**, Headcorn
- **Land at Crockenhill**, Sevenoaks
- **‘Pit Stop Café’ site**, near Lychgate Services, Dargate
- **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
- **Land adjoining Newington Industrial Estate**, off the A2 primary route between Rainham to the west and Sittingbourne to the west.
- **Spratling Court Farm**, Spratling Street, Manston
- **Blaise Farm Quarry, Offham, Kings Hill**, West Malling

Meeting Enforcement Objectives

Overview

7. For the benefit of new Committee Members, planning enforcement is a high public profile function. It underpins the Development Management service within the Planning Applications Group. Planning enforcement work takes place within a legislative framework and is often constrained by the complexity of cases and jurisdictional issues. There are a range of discrete enforcement powers to use but a great deal of judgement and experience is needed in applying any action successfully. There is a high Member and public expectation for this authority to act in a decisive but proportionate way. Seamless working with allied enforcement agencies is another important requirement. The type and degree of intervention is discretionary but failure to act or being unable to account for not acting may be challenged through the Local Government Ombudsman.

Enforcement Protocols

8. The County Council operates an internal and external set of protocols, to ensure a consistent and responsive planning enforcement service. Priority is given to those sites where the activities being carried out have the potential to create the greatest and most irreversible environmental damage. Formal action is only taken as a last resort, in the full context of the case. Mixed-use sites, through established case-law, fall to the respective

Update on Planning Enforcement Issues

Item 6

District Council to deal with. This operational requirement is reflected in our main (external) Enforcement Protocol

Enforcement Imperative

9. The overriding priority for County Matter enforcement is to ensure that the breach (or breaches) and any further damage to the environment is arrested. Restoration will follow within its own timescale. The ideal is to '*remedy the breach*' i.e. a return of the land to its original state. That typically involves the removal off site of imported waste materials. However, highway limitations may dictate a more pragmatic solution of '*alleviating the injury to amenity*'. This may involve the retention either of all material on site or part removal of the imported spoil, leaving the remainder to be spread and levelled to best effect.

Enforcement Approach

10. The more serious and challenging planning contraventions are usually met with formal enforcement action. However, alongside these, there are a number of cases with sufficient planning merit to warrant a retrospective approach. A solution through means of a planning application is usually preferable to long and drawn-out enforcement actions. This meets with Government expectations. Nevertheless, if co-operation is missing or submission of the required schemes is slow, the County Council is in a position to take corrective action at any stage. The support of Members for the reserving of such action on a contingency basis is key to this approach.

Wider Group Involvement

11. The wider Planning Applications Group is engaged in planning compliance work, especially through the use of retrospective planning applications. This is helpfully extending the capacity of the Group in this field. However, it is offset to a degree when applications are delayed or made in an incomplete and imprecise way, frustrating an early determination of the scheme. It is unacceptable for any alleged contravener to gain any form of advantage in relation to all other operators, through use of the retrospective approach. There has to be a 'level playing field'.

Co-ordinating and Advisory Role

12. Alongside the Group's main workload, I am also continuing to offer advice on a number of district enforcement cases. County Officers have been adopting for some time a supportive role, acting in a co-ordinating capacity and forging links between the relevant local planning authority, the Environment Agency and other regulatory authorities including the police.
13. Given the apparent transition from more single site to criminal network based work, we are seeking to share challenging enforcement cases spanning across the planning field and allied legislation. To reinforce this approach, new enforcement partners are being added in an innovative way, especially from the commercial enforcement sector (e.g. HMRC, Financial Conduct Authority and Trading Standards). This allows tighter scrutiny of contraventions and potentially a wider range of sanctions. These represent additional and supporting avenues of enforcement. All embracing contraventions require an all embracing response.

14. This wider collaboration is also important in fulfilling a duty to co-operate among such bodies and for the County Council to report any commercial or financial irregularities that it may come across. We are connected to NAFN – the National Anti-Fraud Network and are able to use that channel to report any suspicious activity to the relevant authorities. Alleged evasion of landfill tax would be an example and HMRC has recently consulted on the potential for unauthorised waste activities to be subject to prosecution under this heading. This would be highly supportive to the County Council's current planning enforcement efforts.

Enforcement capacity

15. Enforcement capacity derives in large part from the networking of available resources across the public sector. Each partner authority has its own challenges in terms of staffing, funding and skills capacity. This reinforces the need for tight collaboration and efficient targeting of resources, ideally in a shared and intelligence-led way. There are on-going attempts to form smart links between all such interests both within and outside of the County Council.

Achievements / Successes

16. Larkey Wood, Chartham is our notable recent achievement. Restoration is now complete, awaiting a permitted housing development scheme granted by Canterbury City Council. All relevant costs have been absorbed by the private developer.

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 sites to formally monitor them under the statutory monitoring charging scheme. Since the last Regulation Committee, we have made a further 24 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 fields a constant flow of ever more demanding and complex cases. These are increasingly organised and criminal in character. We are advising on some, intervening on others and working within collaborative teams on the remainder. A particular avenue we are trying is to intelligently connect our powers to allied legislation and actions. We are seeking innovative ways to link with financial

Update on Planning Enforcement Issues

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regulatory bodies such as Her Majesty's Revenue and Customs (HMRC) and The Financial Conduct Authority (FCA). Such waste crime (within wider activity circles) demands in our view this more complete and sophisticated approach.

Recommendation

20. I RECOMMEND that MEMBERS NOTE & ENDORSE:

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

Case Officers: Robin Gregory

03000 413380

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.

Agenda Item 9

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of the Local Government Act 1972.

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