

**REGULATION COMMITTEE**

**Wednesday, 23rd May, 2018**

**10.00 am**

Council Chamber - Sessions House





## AGENDA

### REGULATION COMMITTEE

**Wednesday, 23rd May, 2018, at 10.00 am**  
**Council Chamber - Sessions House**

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

*Tea/Coffee will be available 15 minutes before the start of the meeting.*

#### **Membership (12)**

Conservative (10): Mr A H T Bowles (Chairman), Mr S C Manion (Vice-Chairman), Mr M A C Balfour, Ms S Hamilton, Mr P J Homewood, Mrs L Hurst, 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. Membership  
To note the appointment of Mr M A Balfour and Mrs L Hurst to the Committee
2. Substitutes
3. Declarations of Interests by Members in items on the Agenda for this meeting.
4. Minutes (Pages 5 - 22)
  - (a) Committee: 23 January 2018
  - (b) Mental Health Guardianship Sub-Committee: 19 January 2018 (To Note)
  - (c) Member Panel: 23 January 2018  
28 March 2018
5. Update on Planning Enforcement Issues (Pages 23 - 26)
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 cases (Pages 27 - 54)

Benjamin Watts  
General Counsel  
03000 416814

**Tuesday, 15 May 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 Tuesday, 23 January 2018.

PRESENT: Mr A H T Bowles (Chairman) Mr S C Manion (Vice-Chairman)  
Mr P M Harman, Mr P J Homewood, Mr R A Marsh, Mr D Murphy, Mr J M Ozog,  
Mr R A Pascoe and Mrs S Prendergast (Substitute for Ms S Hamilton)

IN ATTENDANCE: Mr A Ballard (Principal Democratic Services Officer),  
Mr C Chapman (Scheme Coordination and Systems Development Team Manager),  
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. Minutes

*(Item 3)*

RESOLVED that the Minutes of the Committee meeting held on 28 September 2017 and of the Member Panel meeting held on 23 October 2017 are correctly recorded and that they be signed by the Chairman.

#### 2. Home to School Transport Appeals Update

*(Item 4)*

(1) The Committee considered a report which gave an overview of Home to School Transport appeal statistics for the period between 1 January 2017 and 31 December 2017 with a brief comparison with the statistics for the years 2010 to 2016.

(2) RESOLVED that the report be noted for assurance.

#### 3. 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 28 September 2017.

(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.)*

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

*(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 Ashford Waste Water treatment Works, Bybrook, Ashford; Glebe Farm, Shadoxhurst; Casa Amica, Bilsington, Ashford; Lenham Saw Mills; Dartford Technology College; Wilmington Academy; Wentworth Primary School, Dartford; Roman Road, Dover; Downs Road, Studdal; Stockbury Valley, Stockbury; Water Lane/Moat Road, Headcorn; Little Neverend Farm, Ulcombe; Thirwell Farm, Hernhill; Oare Creek, Faversham; Willow Farm, Faversham; Land adjoining Whyte Leaf Riding Stables, Teynham; Three Lakes Caravan Park, Murston; Corio Farm, East Malling; and Spratling Court Farm, Manston.

(2) During discussion of this item, the Committee agreed that it would expect to see progress in respect of Site 08 (Roman Road, Dover) to progress a resolution at this site. The Chairman offered to discuss this matter with the relevant Cabinet Portfolio Holder.

(3) The recommendation in respect of Site 09 (Downs Road, Studdal) was amended to require a progress report from the Highways Enforcement Team at the next meeting of the Committee.

(4) The Committee agreed that the Chairman should speak on its behalf to the Corporate Director of Growth, Environment and Transportation as well as the Cabinet Portfolio Holder with a view to securing additional resources for the Planning Enforcement Team.

(5) RESOLVED that:-

- (a) subject to (2) and (3) above, the enforcement strategies outlined in paragraphs 3 to 16 of the report and in the Schedule attached to the report be endorsed; and
- (b) the Chairman be requested to speak on the Committee's behalf to the Corporate Director of Growth, Environment and Transportation as well as the Cabinet Portfolio Holder with a view to securing additional resources for the Planning Enforcement Team.

## **REGULATION COMMITTEE MENTAL HEALTH GUARDIANSHIP SUB-COMMITTEE**

MINUTES of a meeting of the Regulation Committee Mental Health Guardianship Sub-Committee held in the Council Chamber - Sessions House on Friday, 19 January 2018.

PRESENT: Mr S C Manion (Vice-Chairman in the Chair), Mrs A D Allen, MBE, Mrs P M Beresford, Mrs P T Cole, Miss E Dawson, Ms S Hamilton, Mr P J Homewood, Mr S J G Koowaree and Mr P W A Lake

ALSO PRESENT: Mr G K Gibbens

IN ATTENDANCE: Mrs C Fenton (Assistant Director Mental Health), Ms C Brodie (Practice Support Manager) and Mr A Tait (Democratic Services Officer)

### **UNRESTRICTED ITEMS**

#### **1. Minutes - 31 January 2017**

*(Item 2)*

RESOLVED that the Minutes of the meeting held on 31 January 2017 are correctly recorded and that they be signed by the Chairman.

#### **2. The Local Authority's Guardianship Register**

*(Item 3)*

(1) The Assistant Director Mental Health briefly introduced her report by explaining the work of the Officers' Working Group, which she chaired. It consisted of two officers from the Adult Social Care and Health Directorate, the Strategic Commissioning Manager for Social Work Education from the Engagement, Organisational Design and Development Department and the Quality Lead Officer for the Approved Mental Health Professional (AMHP) Service. It was supported by a part time administrator and had met on three occasions during the previous year.

(2) The Assistant Director Mental Health went on to explain that since its creation, the Working Party had introduced robust processes and guidance to review and maintain high quality practice, accurate recording and reporting of guardianship orders.

(3) The Assistant Director Mental Health then informed Members that three guardianship orders had been discharged and two renewed since January 2017. No new guardianship orders had been accepted. There were currently two people subject to guardianship in Kent.

(4) Kent County Council was required to provide data to the Department of Health and Social Care (DHSC) on a bi-annual basis on those subject to guardianship. The last submission of data to the DHSC had been on 21 April 2016, covering the period

from 1 April 2015 to 31 March 2016. During that period, two new orders had been accepted and two discharged.

(5) The Assistant Director Mental Health then described the national picture. She said that the DHSC had moved to bi-annual collection and publication of national Guardianship data. Data for 2016-17 was therefore not yet available. Data for the 2015-16 reporting period showed that there had been 175 new Guardianship orders, representing a decrease of 16% from the previous year. This followed a 29% decrease between 2013-14 and 2014-15. On 31 March 2016, 415 people in England had been subject to a Guardianship order, 18% fewer than at the same point in 2015. This had also been the eleventh consecutive year of decline in continuing cases, from 940 cases in 2004-05 to 415 cases in 2015-16, representing a reduction of 56% cent over this period. She considered that the reason for the reduction was, in part, the availability of other mental health legislation. The number of closed cases had reduced compared to the previous year, with 250 cases closed in 2015-16 compared to 305 in 2013-14 (a reduction of 18%). The number of closed cases had now reduced for six consecutive years, since the peak of 495 cases in 2009-10, which represented an overall reduction of 50 per cent since that year.

(6) The Assistant Director Mental Health said that a business analyst had carried out a process mapping exercise during 2017 in relation to the process and administration of Guardianship. All the recommended improvements had been implemented.

(7) The Assistant Director Mental Health said that during 2017 KCC officers had continued to work in partnership with colleagues from the Kent and Medway NHS and Social Care Trust to develop policy, protocols and processes to ensure that individuals had a Nearest Relative and to develop a register of those individuals where the Nearest Relative had delegated their functions to the County Council or another individual; where the individual either did not have a Nearest Relative or their Nearest Relative was unable to perform their functions leading to the Court has appointing Kent County Council; or where the individual either did not have a Nearest Relative or had one who could not perform the functions, leading to the appointment of an individual by the court. An Approved Mental Health Professional (AMHP) post had also been created to ensure that applications to the Court to appoint KCC as the Nearest Relative were made in good time. There were currently 8 people on the KCC Nearest Relative Register.

(8) The Assistant Director Mental Health concluded her presentation by saying that since January 2016 there has not been a need for Members to be asked to adjudicate a disputed case or be asked to discharge an order in accordance with their powers under Section 23(4) of the Mental Health Act 1983 (amended 2007).

(9) In response to a question from Mr Lake, the Assistant Director Mental Health said that there had in fact been no cases at all within the UK where elected Members had been asked to adjudicate a disputed case. This was because such cases were normally considered by Mental Health Review Tribunals. If the situation were to arise in Kent, the Panel would be fully supported in carrying out its duty. This would include reference to other bodies' rulings in such cases.

- (9) RESOLVED that the content of the report be noted together with the list of closed cases since January 2017, the current Guardianship register set out in Appendix 1 and the activity during 2017 set out in Appendix 2 to the report.

### **3. Section 7 Mental Health Guardianship Workshop**

*(Item 4)*

(1) Christine Hutchison, Director of Edge Training and Consultancy Ltd provided training on Mental Health Guardianship to the Committee. The accompanying slides of this presentation were published as supplementary appendices to the agenda papers and can be viewed on the County Council's website for this meeting.

(2) Christine Hutchison's presentation covered a number of topics. She began with a brief outline of the history of mental health Law between 1713 and the Mental Health Act 2007. This was followed by the legal criteria of mental illnesses, covering any disorder or disability of the mind. She continued by setting out the main function of the Mental Health Act which was to "receive, care and treat mentally disordered patients."

(3) Christine Hutchison then turned to Guardianship itself, explaining its grounds and procedures with reference to the Code of Practice. After summarising the grounds when guardianship was most likely to be appropriate, she invited Members to consider some case studies and to discuss whether guardianship would be appropriate in these instances. She then explained the importance of case law before concluding with a summary of national statistics and their overall trend.

(4) RESOLVED to thank Christine Hutchison for her work in leading the Guardianship Workshop and to note the information provided.

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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 Hollingbourne Village Hall, Eyhorne Street, Hollingbourne ME17 1TR on Tuesday, 23 January 2018.

PRESENT: Mr S C Manion (Vice-Chairman in the Chair), Mr P J Homewood and Mr J M Ozog

ALSO PRESENT: Mrs S Prendergast

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

#### UNRESTRICTED ITEMS

1. **Membership**  
(Item 1)

The Panel noted that Mr I S Chittenden had sent his apologies for the meeting and that Mr J N Ozog had agreed to serve on the Panel after the agenda papers had been published.

2. **Application to divert part of public footpath KH183 from the at grade foot crossing to the existing stepped footbridge at Hollingbourne Railway Station in the Borough of Maidstone**  
(Item 3)

(1) The Panel Members visited the application site before the meeting. The visit was also attended by Ms Nicola Mee and Mr Toby Broyad from Network Rail, Mr Patrik Garton, the local Borough Councillor and Mrs Shellina Prendergast (Local Member).

(2) The Definition Officer began her presentation by saying that the application to divert part of public footpath KH183 at Hollingbourne 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 the existing station stepped footbridge. The key risk drivers were the Insufficient sighting or warning time of approaching trains; fast and frequent trains; sun glare (although the crossing did not rely solely on sighting); crossing configuration; and proximity to Hollingbourne station.

(3) the Definition Officer went on to say that although there had been no recorded incidents of near misses or fatalities at the level crossing, Network Rail considered there to be a likelihood of a serious incident due to the lack of visual warning of approaching trains, leading to insufficient time for users to pass over the level crossing. The sighting could not be improved, and the proximity of the

level crossing to Hollingbourne Station reduced the options available to Network Rail to carry out works or to install other mitigation measures. It was for these reasons that Network Rail felt that the closure of the crossing and the proposed footpath diversion to the adjacent station footbridge was the best option.

(4) The Definition Officer then quoted the Legislation relating to the diversion of a public path. This was contained within Section 119A of The Highways Act 1980:

*“(a) The Council may make an Order to divert a public path if it is satisfied that it is in the interests of the safety of users or likely users of at grade crossings.*

*(b) particular consideration has to be given to whether or not it is reasonably practicable to make the existing crossing safe for the public and what arrangements will be made to erect and maintain barriers and signs at the closed crossing.”*

(5) Government Guidance contained in Rights of Way circular (1/09) Guidance for Local Authorities stated:

*“While other criteria are not specified in section 119A, the new way should be reasonably convenient to the public and authorities should have regard to the effect that the proposal will have on the land served by the existing path or way and on the land over which the new path or way is to be created. Consideration should also be given to the effect that the diverted way will have on the rights of way network as a whole and the safety of the diversion, particularly where it passes along or across a vehicular highway.”*

(6) The Definition Officer then set out the responses of consultees. Councillor Patrik Garten had objected to the proposal, stating there are no recorded incidents or near misses at the crossing. He believed that as Hollingbourne station was not suitable for the disabled, the proposal's advantages did not reasonably outweigh the consequential problems. Hollingbourne had a high proportion of elderly citizens who would be affected.

(7) Maidstone Borough Council had no objection to the proposal, whilst Hollingbourne Parish Council had written to Mid Kent Planning, requesting that the application be refused as it was concerned about the access given for people with limited mobility. No responses had been received from the Open Spaces Society, the Ramblers or the British Horse Society.

(8) The Definition Officer said that the West Kent Area PROW Manager had agreed with the proposal. He had commented that he would be uneasy about replacing an at grade crossing with a stepped bridge in most circumstances, but that in this case there was currently no practical access to the site for less mobile users. Similarly, the North Downs Way Trail Manager had no objections to the proposals in light of the safety issues outlined, but had expressed concerns about reduced access for people with mobility issues.

(9) The Definition Officer turned to the views of local residents. Sarah Baxter had objected to the proposal, saying that the path was in regular use and part of the access from Hollingbourne to Broad Street. The area was known for its walks

and a number of regular walkers visited the village and the access point as it was well known and very useful. Many people used the crossing with dogs, so safety would not be improved if the footpath were accessed via the station. She considered Network Rail's core reason for the proposal to be spurious as it could be applied to every such crossing. This particular rail crossing was less hazardous than crossing the road in Hollingbourne.

(10) Philip Smith had objected to the proposal, but seemingly on the misunderstanding that the proposal was just to close the crossing rather than to divert the path. He had objected to the closure but had not responded further when it was clarified that the path would be diverted.

(11) Philippe Niebergall did neither objected nor agreed with the proposal, but had asked why Network Rail wished to close the footpath as it was the gateway to a wonderful area of outstanding natural beauty. He too had not responded further following clarification that the footpath would be diverted. .

(12) Greg Sharpington had objected to the closure of the crossing, saying that he, his friends and family used the crossing frequently throughout the year because it was the obvious walk between their house and that of his parents. Numerous people in Broad Street used the crossing, as did hundreds of ramblers. The crossing was part of the village's heritage and history and should certainly not be closed. Upon receiving clarification that the proposal was to divert the path and not just close the crossing, Mr Sharpington had expressed relief that there would still be a crossing but felt it would not be the preferred option of villagers from Upper Hollingbourne, Broad Street. He had said that he was not aware of any incidents and that he considered the sight in both directions along the track to be good. He had further commented that a bridge could also be dangerous, especially in winter, and that it would mean that some people would not be able to use it. He had given his mother as an example of someone who needed to use a stick and hated steps, but who could walk for miles on flat terrain.

(13) James Johnson broadly supported the proposal but expressed concerns that future maintenance of the path might become neglected. Robert Edwards had not objected but asked for Network Rail to subsequently remove the need for trains to sound their horns.

(14) John Colley had objected to the proposal because the proposed diversion section was impassable during the winter months between points E and F. The ground became waterlogged and then deeply pugged by the movements of cows between fields and impassable until it dried out in late spring. The proposed diversion through Hollingbourne station would discourage use of footpaths KH185 and KH183 which emanated from points A and B. Hollingbourne station was an unstaffed and semi derelict remote station which suffered vandalism, thefts, damage in the car park and youths hanging around. The proposed diversion presented an increased threat to the personal safety of walkers, some of whom would find it too intimidating to use.

The extinguishment was unnecessary because these sections did not cross Network Rail's property. KCC had a duty "to assert and protect the rights of the

public to the use and enjoyment” of these paths and it would be a dereliction of duty to quietly extinguish them under cover of Network Rail’s application.

(15) Jerry Whitmarsh from Linton Parish Council had objected to the proposal stating that he had led walking groups over the crossing many times without incident, and that as far as he was aware, no incidents had ever been reported. He therefore felt it could not be that unsafe.

(16) The Definition Officer reported the following correspondence from Mr Whitmarsh which had been received after publication of the agenda papers:

*“Thank you for keeping me informed regarding this issue. I have meetings on 23rd and it is not clear whether I shall be free to attend the site meeting or panel meeting, but if I can I will do.*

*In the meantime, I am in full support of the report you enclosed and with its conclusions. One or two more comments:*

- I think there is nothing particularly unusual about this crossing: both this line, from Victoria to Ashford, and also the Medway Valley line, have a number of crossings with sightlines that are worse, or at least no better. If this were to be allowed, there would no doubt be many more such requests.*
- The inconvenience of the alternative route offered was indeed a factor contributing to me responding. Sorry if that was not clear.*
- In addition to being Chairman of Linton Parish Council I am also Leader of the Linton Walkers, and as such a regular user of most of the available rail crossings in Mid Kent as we do more than 90 walks per year in this area.”*

(17) The Definition Officer then explained that initially the County Council had declined to accept this application, concluding that there was no real evidence, making the safety case extremely weak. In addition, the statements made to justify the safety case were considered to be hypothetical and based on assumption.

(18) The County Council had then been asked to reconsider accepting the application as the Level Crossing Manager was becoming increasingly concerned about the insufficient sighting. An Officer’s site visit was undertaken, resulting in a decision to accept the application, although it was considered very marginal.

(19) The Definition Officer said that during the consultation period, a number of people had questioned the safety case, pointing out that there had been no recorded incidents or near misses. Although the available sight lines in three of the four directions were considered to be insufficient and not compliant with Network Rail’s criteria, those using the crossing felt that they were adequate. One person had commented that the rail crossing was less hazardous than crossing the road in Hollingbourne and it had also been pointed out that bridges could also be dangerous.

(20) The Definition Officer said that the consultation responses, particularly from those people who frequently used the crossing, had done nothing to persuade officers of the County Council that the level crossing at Hollingbourne was so unsafe that it required closure.

(21) The Definition Officer then set out the most important legal tests set out in section 119A of the Highways Act 1980. The first of these was *whether the right of way will be reasonably convenient to the public*. She said that it was proposed to re-route the footpath over the existing station footbridge. As a result, the length of the path would increase significantly. No one who responded to the consultation had commented on this matter, which therefore indicated that it was not an issue in itself. However, the bridge had raised comments from many people. The main point raised was how the proposal would affect those who were disabled or had limited mobility, with the Parish Council and Borough Councillor expressing particular concerns for local residents. As there were steps on both sides of the level crossing and the fields through which the footpaths then passed were known to become extremely muddy in winter, Network Rail considered that the footpath could only be used by those who are able-bodied. It therefore considered that the proposed diversion via the station footbridge should not be seen as preventing use to a route that should be accessible to all. However, although there was no practical access to the site for some less mobile users, the diversion onto the bridge would exclude some people from being able to use the footpath who were currently able to do so. Whilst wheel chair users could not use the existing crossing, someone who could walk a good distance on the flat using a stick would not be able to use the stepped bridge.

(22) The second test was *the safety of the diversion, particularly where it passes along or across a vehicular highway*. The Definition Officer said that the proposed new route would run over the existing stepped station footbridge. Although people were more concerned about the impact the diversion would have on people's ability to use the bridge, it had also been stated that stepped bridges themselves carried a danger, especially in poor weather.

(23) The Definition Officer then set out her conclusions. She said that the proposal has been put forward by Network Rail on the grounds that the available sight lines from the level crossing were considered to be non-compliant with their criteria. It was their view that there was a likelihood of a serious incident occurring due to the lack of visual warning of approaching trains, providing insufficient time for users to pass over the level crossing. Users of the crossing, however, felt the sight lines were good drew attention to the fact that there had been no recorded incidents, near misses or fatalities at the level crossing. They had also made the pertinent point that the stepped bridge would prevent some users from being able to use the new route whereas they were currently able to use the existing route. This meant that the proposed diversion would not be as convenient.

(24) The Definition Officer said that she was not satisfied that it was expedient in the interests of the safety of users, or likely users, of the crossing that the level crossing should be closed. Furthermore, the proposal to divert the footpath over the existing station footbridge would reduce accessibility for some users of the

path to the extent that they would no longer be able to use it. She therefore recommended that the County Council should decline to make the Order.

(25) Mr Patrik Garton (Maidstone Borough Councillor) said that the footpath linked upper Hollingbourne and lower Hollingbourne in Eyhorne Street. It was also used by older people for recreational walking. The footpath provided access to an Area of Outstanding Natural Beauty, encouraging tourism in the process.

(26) Mr Garton then said that the footpath represented the easiest form of access for residents, particularly as there was a question as to whether the local bus service would continue to run. He was not convinced that the proposed route along the north of the railway line would be well maintained as Hollingbourne had experienced difficulties in getting South East and Network Rail to replace lights and cut hedges.

(27) Mr Garton continued by saying that it was very unlikely that there would be an accident. A maximum of 4 trains ran every hour, two of which stopped at the station. He considered that the suicide argument advanced by Network Rail was fallacious because anyone who did wish to kill themselves would be more likely to do so by jumping off the railway bridge than by standing at the crossing.

(28) Mr Garton then addressed the question of convenience. He said that his 80 year old mother would be unable to climb the stairs and use the bridge, but that she would be able to walk along the muddy path to the crossing.

(29) Mr Garton concluded his remarks by saying that he believed that Network Rail's Health and Safety concerns were unrealistically high and that people should be trusted to use their common sense.

(30) Mr Toby Broyad introduced himself as Network Rail's Level Crossing Manager. He said that people often asked whether every single foot crossing was unsafe. The answer to this question was that they were indeed unsafe. There were three crossings on the Ashford to Maidstone Line. Network Rail had been able to improve the crossings at Lenham and Acton to the point where they now met its safety standards. These improvements would not, however, be sufficient at Hollingbourne.

(31) Mr Broyad went on to say that the Office of Road and Rail (the safety regulator for Britain's railways) wanted Network Rail to completely negate the risks at crossings posed by the human factor. This included an instruction that whistles could not be used as the first form of protection.

(32) Mr Broyad noted that crossing was not on a busy line. This, however, was a factor which increased the danger. The vast majority of the recent 4 fatalities and 306 near misses nationally had occurred at crossings such as this because people became complacent. At Ham Street for example, children had been filmed walking across the line behind one train whilst another one was approaching from the opposite direction. There had also been instances where people had walked in front of trains whilst chatting on their mobiles or fooling around. There had been other instances of casual misuse such as people

scraping their boots on the tracks whilst crossing or wearing headphones and listening to music whilst walking across.

(33) Mr Broyad then said that sighting at the crossing was limited to between 2 and 3 seconds when the train was travelling at 80 mph. For vulnerable people, the time taken to cross the line had to be assessed at 12 seconds. The Office of Road and Rail did not allow whistle boards to be placed any further than 400m from the crossing.

(34) Mr Broyad said that another risk arose when slow trains were sufficiently close to the crossing for the red light to go on. The risk was that if a train was in the station, people would assume that the red light was on because of it. It could, however, be that another train was approaching from the other direction, leading to potentially fatal consequences.

(35) Mr Broyad said that the footbridge was only 95 metres from the crossing and some 200 metres from the nearest houses. It would therefore not be an inconvenience to ask people to walk to it. For vulnerable users, this would represent an improvement as they were currently struggling to walk the southern route to the crossing.

(36) Mr Broyad concluded his remarks by saying that owing to the difficulties posed by the limited sighting of 2 to 3 seconds and the speed of the trains, as well as the false sense of security arising from the limited amount of rail traffic on the line, the only safe option was to divert the footpath.

(37) Ms Nicola Mee (Network Rail) explained that Network Rail leased Hollingbourne Station to Southeast Rail. Whilst it had a policy of responding to complaints and clearing its own land within 28 days, it had no jurisdiction over land held by Southeast Rail. This also applied to questions of accessibility such as the installation of lifts.

(38) Mr Broyad replied to a question from Mr Ozog by saying that if the decision were taken to maintain the crossing, Network Rail would need to carry out a much wider census in the area. If it was discovered that there were vulnerable people who would be at risk, it was possible that Network would apply for emergency closure of the crossing.

(39) Ms Mee replied to a question from Mr Ozog by saying that the proposed new route would be made safe and accessible by laying a surface on top of a stone base. Long wide steps would also be introduced.

(40) Mrs Prendergast (Local Member) said that she had found the discussion very useful. She was not fully convinced by the Health and Safety argument due to the absence of recorded incidents at the crossing. She was concerned that the diversion would be less convenient and accessible for vulnerable users. She asked whether it would be possible for the alternative route to be created without extinguishing the part of the route leading to the crossing.

(41) Ms Mee replied that this would not be possible as funding was only available for Network Rail to make improvements if it could prove that the risk to human life was being reduced.

(42) In the ensuing discussion of the application, the Panel unanimously agreed with Network Rail's view that it was not practicable to make the existing crossing safe for the public. It concluded that it was in the interests of the safety of users or likely users of the at grade crossing to divert the public path.

(43) RESOLVED that the applicants be informed that the proposed diversion of Footpath KH183 from the at grade crossing to the existing stepped footbridge at Hollingbourne Station has been agreed as it is not practicable to make the existing crossing safe for the public. It is therefore in the interests of the safety of users or likely users of the at grade crossing to divert the public path.

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Swale 3 - Sessions House on Wednesday, 28 March 2018.

PRESENT: Mr A H T Bowles (Chairman), Mr S C Manion (Vice-Chairman), Mr I S Chittenden, Mr P J Homewood and Mr R A Pascoe

IN ATTENDANCE: Mr C Wade (Principal Legal Orders Officer) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

**3. Application to register land known as Hospital Field at Brabourne as a new Town or Village Green**  
(Item 3)

(1) The Principal Legal Orders Officer introduced the application by saying that it had been made by Brabourne Parish Council on 1 February 2016 under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014.

(2) The Principal Legal Orders Officer referred Appendix A of his report which showed the layout of the application site. He added that the applicants had included 61 user evidence questionnaires which were summarised at Appendix C of the report.

(3) The Principal Legal Orders Officer then said that the vast majority of the application site was owned by Mr. R. Johnson and Ms. C. Johnson and was currently let under an agricultural tenancy to a local farmer. A small slither of land in the south-western corner (abutting Lees Road) was registered to the Kent County Council whose Property Team had been consulted but had not yet responded.

(4) The Principal Legal Orders Officer continued that an objection to the application had been received from Gladman Developments Ltd who had made an application for planning permission to develop the land for residential development. This application was the subject of a separate process and could have no bearing upon the determination of the Village Green application.

(5) The objection had been made on the grounds that the applicant needed to provide strict proof as to the status of the alleged neighbourhood and the boundaries of the localities relied upon; that use of the site consisted primarily of walking the existing Public Footpaths, which was not a qualifying use for the purposes of the Village Green application. Any wider recreational use was insufficient to demonstrate that the land had been in regular usage by the local community. The objectors also claimed that the site had been used for the

growing of crops on a five-year rotation, which meant that the site as a whole had not been available for recreational use; and that some use had been challenged by the tenant farmer or had taken place with the landowners' permission. The objector had also provided 13 witness statements from people familiar with the application site, including both landowners and the tenant farmers. These claimed that any use of the site had been predominantly along the existing Public Footpaths and that any wider recreational use that may have taken place would necessarily have been interrupted by the agricultural use of the site (predominantly for wheat and barley crops). It was also suggested that claims of recreational use had only recently arisen, apparently in response to proposals to develop the land. In the objector's view, the only just way to resolve the serious dispute about the application would be to hold a Public Inquiry.

(6) The Principal Legal Orders Officer then turned to consideration of the legal tests which all needed to be passed for the application to succeed. The first of these was whether use of the land has been "as of right." This meant that use needed to have taken place without force, secrecy or permission. In this case, there was no evidence or suggestion that access to the application site had been gained forcibly or secretly.

(7) The Principal Legal Orders Officer said that the objectors had asserted that equestrian use of the application site has been challenged by the tenant farmer, and that metal-detecting had been expressly permitted. If this were the case, those uses would need to be discounted as they would not have taken place "as of right".

(8) The Principal Legal Orders Officer then said that an issue that needed to be carefully considered related to the public rights of way that crossed the site, and the degree to which the "walking" activities cited in the user evidence forms related to those rights of way. Walking along a Public Footpath would be an exercise of an existing right, and therefore "by right" instead of "as of right." He explained that this was because users had to initially be using the land as trespassers in order for a right to be acquired after twenty years of unchallenged use.

(9) The Principal Legal Orders Officer said that a large amount of the user evidence referred to walking. A small number of users claimed to have enjoyed unrestricted use across the whole field. It was, however, almost impossible on paper to differentiate for the majority between general recreational walking over a wide area and walking on the public rights of way on and around the application site. He added that it seemed likely that at least some of the use of the application site for walking, jogging and cycling would not be use that would qualify as being "as of right", so the degree of general recreational use needed to be properly established before any firm conclusion could be reached on the "as of right" test.

(10) The second test was whether use of the land had been for the purposes of lawful sports and pastimes. The Principal Legal Orders Officer said that the user evidence provided by local residents gave a range of activities on the application site including walking, playing with children, fruit picking, nature observation and kite flying. Once again, it would be necessary to differentiate between walking in

exercise of an existing public rights of way right and walking at will over a wider area. The objector's position was that the majority of use had taken place on the Public Footpaths. This was disputed by the applicant. It was unfortunately not possible to reach any conclusion on the basis of the evidence currently available.

(11) The Principal Legal Orders Officer explained that another conflict of evidence arose in that some of the activities cited were at odds with the objector's evidence regarding the intensive agricultural use of the application site. Activities such as kite flying, ball games or frisbee could not have taken place during periods when it was alleged that the land was being used for crops such as wheat, barley or oilseed rape.

(12) The objector's evidence was that the land was used annually for high-density crops which, at their peak during summer months, would reach 1 to 2 metres in height. In this case, it would have been impossible for anyone to walk through or recreate on the land without causing substantial damage to the crops. No such damage had been observed. The applicant did not accept that the application site had been farmed in the manner described and suggested instead that the land has been left fallow for many years, with a large area on the western side of the site set aside and uncropped. He added that case law had established that low-level agricultural use was not inherently incompatible with Village Green registration.

(13) In the light of the unresolved conflict of evidence he had described, the Principal Legal Orders Officer said that it was not possible to conclude, without further investigation, whether the land had been used in the requisite manner.

(14) The next test was whether use had been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality. The applicant relied on "the neighbourhood of Brabourne Lees in the localities of the civil parishes of Brabourne and Smeeth." The Principal Legal Orders Officer said that the civil parishes of Brabourne and Smeeth were both legally recognised administrative areas capable of constituting qualifying localities for the purposes of Village Green registration. The objectors had stated that the applicant needed to prove that Brabourne Lees was a qualifying neighbourhood for the purposes of Village Green registration. They had not, however, given any evidence as to why Brabourne Lees could not be a neighbourhood for this purpose. A large number of the witnesses had identify themselves as living in Brabourne Lees. One of them had described it as having "a local reputation for being a close-knit community, good for families with a shop, post office, pubs etc." Several others had also referred to community facilities. The village was shown on maps as Brabourne Lees, forming a discrete and identifiable residential area in an otherwise rural location. For these reasons he said that it would appear that the application site had been used by the residents of a cohesive neighbourhood within two legally recognised localities.

(15) The Principal Legal Orders Officer said that a total of 61 witnesses had submitted evidence in support of the application and that 25 of them had used the land on an at least weekly basis. This seemed to be sufficient to indicate that the land was in general use by the community, although this evidence had to be viewed in the context of the exercise of existing rights through use of the public

footpaths and the extent to which the land was capable of being used for recreational purposes in the light of its claimed agricultural use.

(16) The Principal Legal Orders Officer said that the final two tests had been met in that there was no evidence that use of the land had ceased prior to the application being made. It also seemed to be the case that the application site has been used for a period in excess of the required twenty year period, although this was subject to whether this use qualified for the purposes of Village Green registration.

(17) The Principal Legal Orders Officer concluded his presentation by saying that there were serious disputes of fact between the applicant and the objector, particularly in respect of the degree to which use has been confined to the rights of way crossing the site and the impact upon recreational use of the agricultural operations taking place on the application site. These opposing views could only properly be reconciled by way of a hearing at which both parties could have the opportunity to give oral evidence and challenge each other's evidence in respect of the disputed points. Both the applicant and the objector agreed that a Public Inquiry was the most appropriate way to proceed in this case, as the County Council's Officers were unable to make a sound recommendation on the basis of the information currently available. He explained that Officers were not empowered in Law to critically test the evidence themselves, but that the Courts had established that the appropriate mechanism in such circumstances was for the County Council to appoint an independent Inspector (normally a Barrister) to hear the relevant evidence and report the findings back to the County Council. The final decision regarding the application nonetheless remained with the County Council in its capacity as the Commons Registration Authority. He recommended accordingly.

(18) In response to a question from Mr Chittenden, the Principal Legal Orders officer confirmed that there had been no trigger event affecting this application.

(19) The Chairman commented that documentation should have been submitted to the Rural Payments Agency if agricultural activity had taken place on the land. This would be a productive line of inquiry for the Inspector to follow.

(20) The Chairman proposed, seconded by Mr R A Pascoe that the recommendations of the of the PROW and Access Manager be agreed.

*Carried unanimously.*

(21) RESOLVED that a Non Statutory Public Inquiry be held into the case to clarify the issues.

## Update on Planning Enforcement Issues

## Item 5

Report by Head of Planning Applications Group to the Regulation Committee on 23<sup>rd</sup> May 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 23<sup>rd</sup> January 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 covers planning enforcement objectives, in response to the nature and 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 current throughput of cases is included, which are those the planning enforcement team are currently engaged in or advising upon. These vary in their degree of complexity and challenge. The level of involvement of the County Council also varies, according to remit and case management among the regulatory bodies.
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
  - **Casa Amica & Ripley's Auto Spares Ltd**, Bilsington, Ashford
  - **Hawthorn Cottages**, May Street, Herne Bay
  - **Wilmington Academy**, Common Lane, Wilmington, Dartford

## **Update on Planning Enforcement Issues**

## **Item 5**

- **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 adjoining, Stockham Lane**, off Selsted bends, Selsted.
  - **Fleetmix Ltd**, Aggregate Stockpile, Northfleet, Kent
  - **Former Petrol Station / Car Wash**, London Road, Gravesend.
  - **Land at Stockbury Valley (Longton Wood)**, Detling Maidstone
  - **Water Lane / Moat Road**, Headcorn, Maidstone
  - **Little Neverend Farm**, Pye Corner, Ulcombe
  - **Environment First Ltd**, Lested Farm, Chart Sutton, Maidstone
  - **Thirwell Farm**, Drove Lane, Hernhill
  - **Land at Sites A and C**, Oare Creek, 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. In fact, new procedures are being introduced to ensure that case referrals (in the main from district councils) are made with more accurate reference to the County Council's planning enforcement remit and supported by the necessary information. This will allow for tighter focus on our core strategic duties.

### **Meeting Enforcement Objectives**

#### *Background*

9. The reality of planning enforcement is that there is always a high expectation from the public, their representatives and other interested parties for this Authority (or the other regulators) to act in a swift and decisive way against alleged planning breaches. Any

## **Update on Planning Enforcement Issues**

## **Item 5**

County Matter action, must be robust and *intra vires* i.e. within the powers and control of the County Council.

### *Operational matters*

10. Planning enforcement is a diverse field of work, with cases needing to be dealt with on their own individual merits. A judgement has to be made in all cases, on the likelihood of planning permission being granted or not. Any formal actions taken or contemplated also have to be proportionate.
11. Significant research is required, to assess and filter cases and to develop enforcement strategies. Reports of contraventions are triaged, along with the seeking out at speed, of precise and relevant information, given the environmental urgency and amenity impacts being caused to local communities. This demands at its core, precise and accurate information and measured involvement in cases, according to remit. Actions outside the County Council's jurisdiction, however well-intentioned or publically supported would be vulnerable to challenge on legal grounds.

### *The proliferation of waste crime*

12. Waste crime continues to be a prominent feature of our workload, along with the Environment Agency. This fact has been recognised by Government in new tax measures, introduced on 1<sup>st</sup> April 2018. This allows Her Majesty's Revenue and Customs (HMRC) to pursue individuals, companies and their supporting networks for the alleged evasion of Landfill Tax. The County Council's Planning Enforcement Team has long anticipated this move and has been organising, along with collaborating bodies, to ensure its optimum use.

## **Monitoring**

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

13. 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**

14. 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**

15. The County Planning Enforcement workload is continuing at a demanding level. Operational improvements are being introduced to alleviate some of these pressures. This will allow a more responsive and targeted service that has the strategic cases within the Council's remit at its heart. Unfailing precision is required at all times and again, attention is being given to the case briefings received from formal sources. Streamlining this aspect alone will bring important operational benefits. The key to successful planning enforcement is seamless and collaborative working between regulatory authorities. The County Council's specialists in this field encourage such links and advise accordingly, even when cases fall outside our remit.

**Recommendation**

16. I RECOMMEND that MEMBERS NOTE & ENDORSE:

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

Case Officers: KCC Planning Enforcement

03000 413380 / 413384

Background Documents: see heading.

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

Agenda Item 8

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