

REGULATION COMMITTEE

Wednesday, 26th September, 2018

10.00 am

Council Chamber - Sessions House





AGENDA

REGULATION COMMITTEE

**Wednesday, 26th September, 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 (14)

Conservative (12): 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,
Mrs S Prendergast 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 Mrs S Prendergast to the Committee.
2. Substitutes
3. Declarations of Interests by Members in items on the Agenda for this meeting.
4. Minutes (Pages 5 - 26)
 - (a) Committee: 23 May 2018
 - (b) Member Panel: 23 May 201817 July 2018
5. Dates of future meetings
Thursday, 24 January 2019
Wednesday, 22 May 2019
Wednesday, 25 September 2019
Tuesday, 28 January 2020
Wednesday, 20 May 2020

All meetings start at 10.00 am.

6. Update from the Definitive Map Team (Pages 27 - 30)
7. Update on Planning Enforcement Issues (Pages 31 - 34)
8. Other Items which the Chairman decides are Urgent
9. Motion to exclude the public

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

EXEMPT ITEMS

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

10. Update on Planning Enforcement cases (Pages 35 - 62)

Benjamin Watts
General Counsel
03000 416814

Tuesday, 18 September 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

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber - Sessions House on Wednesday, 23 May 2018.

PRESENT: Mr A H T Bowles (Chairman) Mr S C Manion (Vice-Chairman)
Mr M A C Balfour, Mr I S Chittenden, Ms S Hamilton, Mr P M Harman,
Mr P J Homewood, Mrs L Hurst, Mr R A Marsh, Mr D Murphy, Mr R A Pascoe and
Mr A M Ridgers

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

UNRESTRICTED ITEMS

5. Membership (Item 1)

The Committee noted the appointment of Mr M A C Balfour and Mrs L Hurst.

6. Minutes (Item 4)

RESOLVED that:-

- (a) the Minutes of the Committee meeting held on 23 January 2018 and the Minutes of the Member Panel meetings on 23 January 2018 and 28 March 2018 are correctly recorded and that they be signed by the Chairman; and
- (b) the draft Minutes of the mental Health Guardianship Sub-Committee meeting held on 19 January 2018 be noted.

7. Update on Planning Enforcement Issues (Item 5)

(1) The Head of Planning Applications Group gave an update on planning enforcement and monitoring work carried out since the Committee meeting on 23 January 2018.

(2) The Chairman informed the Committee that he had arranged a meeting with the Cabinet Portfolio Holder for Growth, Environment and Transportation in respect of the Committee's request for him to seek to secure additional resources for the Planning Enforcement Team. He would report on the outcome to the next Committee meeting.

- (3) 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.)

8. Update on Planning Enforcement cases

(Item 8)

(1) The Head of Planning Applications Group and the Team Leader - Planning Enforcement gave an update on unauthorised planning enforcement matters setting out actions taken or contemplated at Ashford Waste Water Treatment Works, Bybrook, Ashford; Casa Amica, Bilsington, Ashford; Hawthorn Cottages, Herne Bay; Wilmington Academy; Wentworth Primary School, Dartford; Roman Road, Dover; Downs Road, Studdal; Stockham Lane, Selsted; Fleetmix Ltd, Northfleet; London Road, Gravesend; Stockbury Valley, Stockbury; Water Lane/Moat Road, Headcorn; Little Neverend farm, Ulcombe; Lested Farm, Chart Sutton; Thirwell Farm, Hernhill; Oare Creek, Faversham; White Leaf Riding Stables, Teynham; Three Lakes Caravan Park, Murston; Corio Road, Watlington; and Spratling Court Farm, Manston.

(2) The recommendation in respect of Site 07 Downs Road, Studdal was amended to the maintenance of a watching brief by KCC Highways Enforcement together with reports on any further developments.

(3) RESOLVED that:-

- (a) subject to (2) above, the enforcement strategies outlined in paragraphs 4 to 20 of the report and in the Schedule attached to the report be endorsed; and
- (b) the letter from Highway Operations Enforcement in respect of Site 07 Downs Road, Studdal be noted as set out at Appendix 2 of the report.

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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 Peter Sloper Room, Dymchurch Village Hall, 6 Orgarswick Avenue, Dymchurch TN29 0PA on Wednesday, 23 May 2018.

PRESENT: Mr A H T Bowles (Chairman), Mr S C Manion (Vice-Chairman), Mr M A C Balfour (Substitute for Mr P J Homewood), Mr I S Chittenden and Mrs L Hurst (Substitute for Mr R A Pascoe)

ALSO PRESENT: Mr M E Whybrow

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

UNRESTRICTED ITEMS

4. Application to register land known as the Recreation Ground at Dymchurch as a new Town or Village Green
(Item 3)

(1) Members of the Panel visited the before the meeting. The visit was also attended by Mr M J Whybrow (Local Member), representatives from Friends of Dymchurch Rec and some 60 members of the public.

(2) The Principal Legal Orders Officer began his presentation by saying that the County Council had received an application to register land known as Dymchurch Recreation Ground as a new Town or Village Green from Ms. Deana Coker on behalf of the Friends of Dymchurch May 2017. The application had been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014. It had been accompanied by 47 user evidence questionnaires in support.

(3) The Principal Legal Orders Officer then explained that Section 15 of the Commons Act 2006 enabled any person to apply to a Commons Registration Authority to register land as a Village Green where it could be shown that “*a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.*” The application also needed to have continued “as of right” until at least the date of application or to have ended no more than one year prior to the date of application.

(4) The Principal Legal Orders Officer described the area of land subject to the application as a recreation ground of approximately 9.9 acres (4 hectares) in size situated off St. Mary's Road in the village of Dymchurch. Access to the site was via a shared pedestrian and vehicular entrance from St. Mary's Road adjacent to the Romney, Hythe and Dymchurch railway line. Sections of the

Recreation Ground (the northern corner and the area along the eastern boundary of the site, including the pavilion had been excluded from the application site at the applicant's request. The multi-user games area on the western side of the site has also been excluded because it was affected by planning consent and therefore incapable of registration.

(5) The Principal Legal Orders Officer then said that the application site was owned by Dymchurch Parish Council which had opposed the application on the grounds that it would preclude the democratic right of residents to consider an option to develop part of the site for housing in order to raise funds for improved amenities in the parish. The application site had originally been acquired by the Parish Council for the purpose of sport and recreation in the village and it continued to be used for that purpose. A pavilion had been constructed in 1931 and had been used by football and cricket clubs as changing rooms until 2006. This use had ceased due to its decaying condition and the cost of adapting the building to meet current standards and legislative requirements. It had not been possible to secure external funding for a new pavilion. The Parish Council had responded to the situation by consulting local residents on various options for raising funds for improved amenities generally. One option put forward was to use some 2 acres of the recreation ground for housing. Village Green status would impose restrictions on the land that would ultimately preclude this. The Parish Council firmly believed that it was the parishioners' democratic right to be able to consider all available options in order to decide what was best for the parish.

(6) The Principal Legal Orders Officer explained that whilst the Parish Council's concerns were noted, Village Green applications had to be determined solely on the basis of the legal tests set out in section 15 of the Commons Act 2006. Any concerns about amenity, suitability, desirability or future use were not issues that the County Council could take into account when determining the application.

(7) The Principal Legal Orders Officer then moved on to consider the legal tests, all of which had to be met for registration to take place. The first of these was whether use of the land had been "as of right." The definition of this phrase had been considered by the House of Lords. The *Sunningwell* case had established that rights were acquired if a person used the land for a required period of time without force, secrecy or permission, and the landowner neither stopped him nor advertise the fact that he had no right to be there.

(8) The Principal Legal Orders Officer continued that the application site formed part of an established recreation ground. For this reason there was no suggestion that any use of the land has been with force or in secrecy. In cases where land was owned by a local authority, it was important to determine whether recreational use of the application site by the local inhabitants had been by virtue of any form of permission. This was because use which was by virtue of any permission (whether express or implied) would not be "as of right". Local authorities had various powers to acquire and hold land for a number of different purposes to assist in the discharge of their statutory functions. The mere fact that a local authority owned land did not automatically mean that the local inhabitants were entitled to conduct informal recreation on it. On the other hand, local authorities also had powers to acquire land for the purposes of

public recreation. In those cases, the land was provided specifically for the purposes of public recreation. Additionally, land was often donated or gifted to Local Authorities for the same purpose.

(9) The Principal Legal Orders Officer then explained that when a Village Green application local authority owned land was being considered, it was necessary to identify either the powers under which the land was held, or the terms of any gifted or donated land. If the local authority held the land specifically for the purposes of public recreation, then its use was generally considered to be by virtue of an existing permission and, hence, “by right” rather than “as of right”.

(10) In order to establish the facts, the County Council had directed the Parish Council to provide further information regarding its acquisition of the application site and how and for what purpose it considered it held the land. The Parish Clerk had set out this process on behalf of her Council and also attached photocopied evidence of extracted Parish Council Minutes and other relevant information. Her letter set out that it had been reported to the parish council meeting of 22 November 1927 that 6 acres of land had been offered as a gift to the parish council to be used for sport and recreation on the basis the parish council undertook future maintenance and the cost of laying out the field in a condition fit for sports. The acceptance of the gift as a public recreation ground had been agreed at the parish council meeting in December 1927. The southern part of the application site had been acquired by the Parish Council by way of a conveyance dated 4th March 1929 which included a clause specifically requiring the Parish Council *“for ever hereafter to use the said property for the purposes of a Recreation Ground”*. Bye laws had then been introduced which were still in use. A small additional plot of land had been purchased by the Parish Council in 1934 to overcome difficulty of access to the recreation ground.

(11) The Principal Legal Orders Officer went on to say that the 1929 conveyance also included an option for the Parish Council to purchase additional land in the vicinity for recreation purposes. This appeared to have been taken forward when a further piece of land was purchased to provide greater space for sports and recreation. The Parish minutes of July 1975 to this effect had been supplied by the Clerk. She had asserted the view that this purchase had specifically been made in order to provide recreation facilities for residents and that in consequence, any use would have been “by right” and not “as of right”.

(12) The Principal Legal Orders Officer said that the minutes and other attachments provided made it clear that the application site had originally been acquired by the Parish Council specifically for the purposes of public recreation. The applicant had been given the opportunity to address the evidence provided by the Parish Council. Whilst raising several points in her letter of response, there was nothing within it germane to the tests of registration that needed to be considered by the Panel.

(13) The Principal Legal Orders Officer referred to the *Beresford* and *Barkas* cases which had been considered by the House of Lords and High Court respectively. The conclusion in each of them had been that no matter under

which Act a local authority owned and administered land for public recreation, public users could never be regarded as trespassers at any stage. The public could only have used the land with permission. He therefore concluded that any recreational use of the land had taken place had been “by right” and not “as of right”.

(14) The Principal Legal Orders Officer said that although he had concluded that the “as of right” test had not been met, he nevertheless needed to consider the other tests. The next test was whether use of the land had been for the purposes of lawful sports and pastimes. He said that the summary of evidence of use by local showed the activities claimed to have taken place on the application site, including dog walking, kite flying, ball games, picnics and jogging. It therefore appeared that the land had been used for a range or recreational activities.

(15) The third test was whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality. Although the applicant had not stated the locality relied upon in support of the application it would not be unreasonable to assume that the relevant locality in this case was the civil parish of Dymchurch, particularly as the land had been provided by the local Parish Council for its residents and as the user evidence questionnaires all come from residents of the parish. The evidence of use indicated that the land had been in regular usage for recreational purposes. Eleven of the users attested to having used the and on a daily basis, whilst several others (including people whose properties overlooked the land) referring to having observed daily use by others. The general impression from the evidence as a whole was that the land had been used in a manner entirely consistent with its status as a recreation ground. There was therefore little doubt that the land had been used by a significant number of the residents of Dymchurch.

(16) The Principal Legal Orders Officer said that use of the land had continued up to the date of application and had never ceased. This test had therefore been met except for the fact that the use had been “by right” rather than “as of right.” The same applied to the test as to whether use had taken place over a period of twenty years or more.

(17) The Principal Legal Orders Officer summarised his findings by saying that there appeared to be no dispute between the parties that the application site has been used for recreational purposes, without challenge, for a period in excess of twenty years continuing until (and beyond) the date of the application. The crux of the matter, however, was whether that use amounted to trespass by local residents or whether it took place in exercise of an established right. In this case, the evidence very clearly suggested that the application site had always been provided for recreational use by the landowner and that the residents had, in tum, used the land “by right.” He therefore concluded that the tests had not been met and recommended accordingly.

(18) Ms Deana Coker (applicant) said that recreational grounds were a crucial part of any community because they had a significant impact on the development of children and the happiness of everyone in the neighbourhood. She added that she was immensely passionate about the village of Dymchurch and felt

compelled to protect it for future generations. She had applied for Village Green status for this reason.

(19) Ms Coker showed the Panel a map of Dymchurch. This, she said was the locality that the application pertained to. The village was boarded by the sea and farming land. There was a wonderful sandy beach which disappeared completely at high tide. This was one of the reasons why the Recreation Ground was so important. Dymchurch was a deprived area and it was costly to travel the distances to other recreational facilities.

(20) Ms Coker then said that the Recreation Ground was used by a significant number of people for activities such as children's parties, family picnics, football, netball, tennis, rounders and cricket. The brownies and Scouts used it for their activities and the area was also popular with dog walkers and joggers. Local charities used the Recreation Ground for fund raising, and it had also been used by the villagers since the 1960s for their "Day of Syn" activities.

(21) Ms Coker asked the Panel to bear in mind that recreation was essential for child development as well as physical and mental health. Councils needed to play their part on providing facilities or the general economy and welfare of the country would suffer from days off work, overcrowded surgeries and hospitals and broken lives. She quoted the Prime Minister's statement that the Government would aim to make the current generation the first one to leave the natural environment in a better state than they had found it.

(22) Ms Coker then referred to the Dymchurch Parish Council meeting of 22 November 1927 where it had been reported that 6 acres of land had been offered to it as a gift to be used for sport and recreation in the village on the understanding that the Parish Council would undertake the future maintenance and costs of laying out the field in a fit condition for sport. This act of generosity had saved future Councils a great deal of money in respect of providing recreational land. Recently, though, parts of the Recreation Ground had been neglected. Families had been unable to use it for prolonged periods due to the Council's policy of not opening the toilets. The pavilion had been allowed to fall into disrepair by the very body of people which should have ensured its upkeep.

(23) Ms Coker said that the village had been let down by the Parish Council which should have maintained and safeguarded Dymchurch's open space but had instead used words such as "burden" and "disrepair" in order to hide their intention to sell off the Rec for development. Just over a year earlier, the Parish Council had started enquiries into seeking planning permission for housing on the Rec. This had been done without consultation and by expending a large amount of time and money from the Village Precept in support of this goal.

(24) Ms Coker concluded her remarks by saying that she fully understood that the Panel had to consider strict criteria before deciding whether to register the land as a Village Green. She asked how the Rec could be saved as there appeared to be no protection for applications that sought to protect land which had been used solely for the recreational purpose it had been intended for from local parish councils who wished to sell off the land for development. She asked the Panel to approve the application in the interests not only of the Rec but also every other recreation ground that was in the same danger.

(25) Mrs Vanessa McCreedy addressed the Panel in support of the application. She said that the evidence showed that there had been a requirement for a

Village Green in Dymchurch ever since 1927 when 6 acres of land had been gifted to the village for sports and recreation. This need had been underlined when the Parish Council had bought additional land in 1933 and 1976 in order to extend the facility.

(26) Mrs McCreedy then said that she had been one of the authors of the adopted Parish Plan in 2006. She could attest that the villagers had supported the need for a recreation ground. Funding to the tune of £147,000 had been raised for improvements with the full support of the Parish and District Councils.

(27) Mrs McCreedy then said that in response to the plan put forward by the Parish Council to sell some of the land for housing, the Friends of Dymchurch Recreation Ground had conducted a survey. There had been no evidence of support for housing development within the 966 surveys returned. The reason this meeting was taking place because the open space, developed by previous Parish Councils was now under threat from the present Parish Council which was looking for sources of funding by selling off part of the Recreation Ground for housing.

(28) Mrs McCreedy said that the *Friends of Dymchurch Recreation Ground* understood that people would have needed to have been trespassing on the land for its use to have been “as of right.” They were concerned that although use was currently “by right” this status would be lost if the land was sold off for private development. If the Panel turned down the application, the villagers stood to lose part of their open space, setting a precedent for more space to be taken at a later stage.

(29) Ms McCreedy concluded by saying that it was impossible to predict what would happen in the future. The unique landscape of Romney Marsh was in danger of being lost. If, however, the application were to succeed there would be one protected area that would continue to be enjoyed by all. She appealed to the Panel to help protect the Recreation Ground. If this one could not be saved, no recreation ground in the country would be safe from development.

(30) Ms Sally Cook from *Friends of Dymchurch Recreation Ground* spoke in support of the application. She said that the Parish Plan had been adopted by the Parish Council in 2006. It represented the manner in which the community wanted the village to develop contained suggestions for the development of the Recreation Ground including money making activities.

(31) Ms Cook then said that members of the community had been successful in fund raising, including the building of the Village Hall. The Parish Council, however, had not been as successful. According to newspaper reports, it was asking for fund raising suggestions. Advice had been given to the Parish Council at its 2017 AGM on the type of evidence required to support successful funding applications. At that meeting, the retired Parish Plan representatives had been asked to raise funds for a new pavilion, but she had needed to decline this request. The Parish Council had then informed the local community that it would need to sell off part of the Recreation Ground for housing. Not a single hand had been raised in support of this proposed plan. This had motivated a group of local residents to form the *Friends of Dymchurch Recreation Ground*.

(32) Ms Cook said that one of the suggestions within the Parish Plan was to incorporate a tearoom at the Recreation Ground that would also serve train spotters and users of the nearby Romney Hythe and Dymchurch Railway. The area suggested had not been included in the Village Green application, which meant that this option remained open and also that a new pavilion could be constructed.

(33) Ms Cook continued that there had been no evidence of an up-to-date survey or business plan at the AGM. The *Friends of Dymchurch Recreation Ground* had therefore sent a survey to every home within the parish, including questions on potential use of the recreation ground and the future of the pavilion. Space had also been left for parishioners to include additional information and comments. More than 680 completed surveys had been collected from Dymchurch residents and another 280 online responses had also been received. Over 100 of these responses had included detailed comments.

(34) Ms Cook then said that the application had been made to protect the land. The Parish Council had argued that the application would have a negative impact and that current activities would not be permitted if it became a Village Green. She hoped that the Panel could provide reassurance that this would not be the case and that everyone could work together for a successful outcome. She wanted to work with the Parish Council to improve the lives and economy of the residents, although at this point there had been no response to the *Friends of Dymchurch Recreation Ground's* offer of assistance. Indeed, it was understood that the Parish Council had set aside £15k to facilitate the sale of the land. The hope remained that they would see that there were other ways to produce what the village needed and that the community was passionate about it.

(35) Ms Cook finished by reading out a message from the Wraight family (which had originally donated the land. It read:

“As direct descendants of Morris and Daisy Wraight (our grandparents), we strongly believe their gift of the ground was given with the ongoing intent for its use to be as a place of recreation for the population of the village of Dymchurch and its surrounds. The wording of the deeds states this and should the recreation ground be used for development or use other than stated in the deeds, we believe is breaching the true intent and wishes of our grandparents. As members of the Wraight family we have no hesitation in saying that we will continue to fight for its use remaining as a place of joy and pleasure for everyone. We have many, many memories of playing as a child on this ground, watching cricket matches and taking the oranges out at half time for the football players. Wishing everyone who supports this cause well and good luck for the meeting.”

(36) Mr Ian Meyers (Chairman of Dymchurch PC) thanked the officers for an excellent and well-briefed report. He said he had served on the Parish Council for 25 years and that it was now necessary for everyone to work towards reconciliation. The intention of the Parish Council had been to undertake a feasibility study if this was merited by the outcome of consultation.

(37) Mr Russell Tillson (Chairman of the Dymchurch PC Assets and Amenities Group) said that he was the author of the options paper that had been considered at the Parish AGM in 2017. Dymchurch PC had the obligation to protect open

spaces and to work to extend them. Each of the options put forward for consultation (of which the development was only one) had sought to protect the Recreation Ground for the purposes for which it had been donated.

(38) Mr M E Whybrow (Local Member) said that he had supported the application from the outset. Open land was very scarce in his constituency and the Recreation Ground was the only such area within the parish of Dymchurch.

(39) Mr Whybrow then said that he recognised that the Panel had no leeway to consider morals or public opinion and that it had to carry out a tick box exercise in order to comply with the Law.

(40) Mr Whybrow continued by saying that the application would not have come forward if the Recreation Ground had not been under threat. It needed to be kept in its entirety solely for recreational purposes for the village. He added that the Parish Council had omitted the word “solely” when writing to the County Council concerning the nature of the donation of the gift as recorded in the 1927 Minutes. He also noted that the land had been donated as a free gift to the parish. If this was the case, then how could use be “by right” if the Parish Council was not in a position to grant permission?

(41) The Principal Legal Orders Officer said that he had previously considered Mr Whybrow’s question. For the purposes of Village Green registration, use would still be “by right” because the people using the land could not be doing so as trespassers.

(42) Mrs Gill Smith (Clerk to Dymchurch PC) informed the meeting that the results of the survey on the options report contained within the Spring edition of the Dymchurch Parish Council newsletter had very recently been adjudicated. The outcome indicated that the residents wished to continue to use the site for recreational purposes as set out in 1929. The Parish Council would continue to facilitate this. She then gave the results to the Chairman who read out the following responses:

“Q2: Would you support the construction of new houses on the unused area of the Bull’s Field car park? Yes 46%, No 54%.

Q4: Would you support the construction of ten houses on the recreation ground as a means of financing the construction of a new pavilion and provision of improved facilities? Yes 48%, No 53%.”

(43) Before moving on to the commencement of the Panel’s decision-making, the Chairman thanked everyone at the meeting for their eloquence, good behaviour and forbearance.

(44) The Principal Legal Orders Officer responded to Members’ questions by saying that it was open to anyone to challenge the Panel’s decision if they believed that it had erred in Law. He conformed that if the Panel turned down the application, it would still be open to the Parish Council to seek to voluntarily register the land under Section 15 (8) of the Commons Act 2006. The *Beresford* and *Barkas* cases were accepted within the Legal profession as “the authorities”

in terms of Case Law. The Panel could have confidence in the safety of these judgements.

(45) On being out to the vote, the recommendations of the Public Rights and Access Manager were agreed unanimously.

(46) RESOLVED that the applicant be informed that the application to register the land known as Dymchurch Recreation Ground as a Town or Village Green has not been accepted.

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KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Shoreham Village Hall, 8 High Street, Shoreham TN14 7TB on Tuesday, 17 July 2018.

PRESENT: Mr P J Homewood, Mr J M Ozog and Mr R A Pascoe

IN ATTENDANCE: Mr C Wade (Principal Legal Orders Officer), Mr W Barfoot (PROW Definitions Officer), Mr D Munn (PROW Area Manager - West Kent) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

5. Election of Chairman (Item 1)

(1) Mr P J Homewood moved, seconded by Mr J N Ozog that Mr R A Pascoe be elected Chairman for the meeting.

Carried

(2) Mr R A Pascoe thereupon took the Chair.

6. Application to divert part of Public Footpath SR22, Shoreham in the District of Sevenoaks (Item 3)

(1) The Members of the Panel visited the site of the proposed diversion prior to the meeting. This visit was also attended by the applicant, Mr Jeremy Aslam and by some 12 other members of the public.

(2) The PROW Definition Officer introduced the report by saying that the County Council had received an application from Mr Jeremy Aslam in July 2015 to divert part of Public Footpath SR22 at Shoreham. Mr Aslam was the owner of The Garden House whose land the relevant section of the path ran through. The reason for the application was to provide greater security for his property.

(3) The PROW Definitions Officer moved on to describe the present route and proposed new route of Public Footpath SR22, its width of 2.0 metres (except for the area between points C and D which would be 1.2 metres. He added that the applicant would be required to improve surfacing on the diverted route to remove all unevenness caused by the current large pieces of masonry and tree roots and to provide a suitable depth compacted MOT Type 1.

(4) The PROW Definitions Officer then set out the County Council's agreed criteria that needed to be satisfied. These were:-

- (a) The status of the route must not be in dispute at the time of the application, unless the Public Path Order is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981;*
- (b) The applicant must agree to meet the County Council's costs of promoting the Order and bringing the new path into a fit condition for public use;*
- (c) The applicant must also agree to defray any compensation which may become payable as a result of the proposal; and*
- (d) The definitive line should, where it is considered by the Council to be reasonably practicable be open, clear and safe to use.*

Nothing in this policy is intended to prevent the County Council promoting a Public Path Change Order in any case where it considers it appropriate in all the circumstances to do so.

(5) The PROW Definitions Officer then set out the six criteria in the Highways Act 1980 that needed to be satisfied for the proposed diversion to be agreed. These were:-

- (a) Whether it is expedient in the interests of the landowner that the right of way in question should be diverted;*
- (b) Whether the point of termination of the path will be substantially as convenient to the public given that it is proposed to be diverted to another point on the same or a connecting highway;*
- (c) Whether the right of way will not be substantially less convenient to the public;*
- (d) The effect that the diversion would have on public enjoyment of the path as a whole;*
- (e) The effect on other land served by the existing right of way; and*
- (f) The effect that any new public right of way created by the Order would have on land over which the right is created and any land within it.*

(6) The PROW Definitions Officer considered the first criterion by saying that the landowner had applied to divert the public footpath in order to formalise the situation on the ground and for security in the garden of his property. Although the legal alignment of the route was currently obstructed, the application needed to be considered as though it was not. Diversion of the route away from the garden (it currently passed through the front lawn) would mean that no one would be have the legal right to walk on it without being challenged. The PROW Definitions Officer therefore concluded that the proposed diversion would be expedient in the interests of the landowner.

(7) The PROW Definitions Officer then said that the second criterion was met because the point of termination of the path was not changing and would therefore be substantially as convenient to the public.

(8) The PROW Definitions Officer moved on to consideration of the third criterion by saying that the proposed diversion would add approximately 39 metres to the total length of the path. This was a minimal increase in comparison to the total distance and was therefore unlikely to be a major inconvenience. The same principle applied to the question of the direction of the route because

the slight change of direction before returning to the previous straight line was unlikely to have a substantial effect on the users' onward journey.

(9) Comments had been received that the proposed diversion was much steeper than the definitive line. Some sections of the proposed diversion were indeed steeper than the definitive line, but the difference was relatively minimal. Furthermore, unaffected sections of the footpath, particularly through the woods to the north east were substantially steeper than the proposed diversion, which meant that this section of the footpath was unlikely to have a substantial effect on the overall convenience of the path to the public.

(10) Comments had also been received regarding the current uneven surface of the proposed diversion. Improvements would be required, and the use of Type 1 surfacing would increase the ease of access of the path.

(11) The PROW Definitions therefore concluded that, whilst the proposed diversion was slightly less convenient than the existing line, this was unlikely to have a substantial impact on the convenience to the public.

(12) The PROW Definitions Officer then turned to the question of the effect that the diversion would have on the public enjoyment of the path as a whole. He said that the section of SR22 which ran through the applicant's garden was relatively open with only two small sections of footpath running through trees and undergrowth. The proposed diversion ran along the outskirts of the garden with vegetation on either side, behind a shed where the path would slightly narrow, before running through a double fenced path along the bottom of the garden.

(13) Many comments received had mentioned that the proposed diversion was amongst the undergrowth and enclosed. However, parts of the whole path also ran through similar undergrowth and trees and were equally unpleasant to walk through.

(14) The PROW Definitions Officer then said that the existing alignment was one of the few sections which ran across open land and was therefore one of the most enjoyable parts of the lengthy path. By diverting this section to a new route enclosed by vegetation and trees, and beside a shed structure, the path would lose one of its most appealing sections, reducing the already limited number of open sections on the length of the path which would have a substantial effect on its enjoyment.

(15) The PROW Definitions Officer continues that consideration also needed to be given to the views available to the public. He said that the existing route gave users a substantial open view of the valley and wider countryside. This view was available from the majority of the legal alignment through the garden, and only began to diminish after leaving the garden and approaching the unaffected section of the path. This view also included the Shoreham Cross on the hills on the opposite side of the valley. This cross had historical and cultural importance. The rest of the footpath did not offer such substantial views of the cross. The proposed diversion did give a few glimpses of the view, but these were limited to the point where it was barely available at all for most of section A-C-D except where the surrounding vegetation had been cut back to offer a small glimpse of

the surrounding countryside. Overall, the unimpeded view was unique to this section of the footpath but was not consistently available from the proposed diversion. It was clear from the comments and objections received that enjoyment of the views was a key reason for using the route.

(16) The PROW Definitions Officer informed the Panel that one comment had been received indicating that its author felt uncomfortable about walking through someone's garden. He believed that, on balance the enjoyment of the view and the openness of the path outweighed any discomfort felt by members of the public in using a route across the garden. He therefore concluded that the proposed diversion would have a substantial negative impact on the enjoyment of the path.

(17) The PROW Definitions Officer briefly summarised his views on the remaining two criteria by saying that the proposed diversion would have no impact on any land served by the existing public right of way and that it was unlikely to have a major effect on the land on which the right was so created.

(18) The PROW Definitions Officer concluded his presentation by saying that the proposed diversion met the legal tests which needed to be applied by the County Council when considering whether to exercise its discretion to make an order, but failed to meet the confirmation test regarding the impact on public enjoyment. He therefore recommended that the Order should not be made.

(19) Mr Neil Powell addressed the Panel as an objector to the proposed diversion. His remarks included references to the details of a neighbourhood dispute, which are not included in these Minutes.

(20) Mr Powell said that he lived next door to the property subject to the proposed diversion. The definitive route was blocked in a number of places, making it impassable. The effect had been to divert walkers onto his land, and he believed that the proposed diversion was also on his land. He had made his particular concern known to the County Council but it had chosen to disregard it.

(21) Mr Powell said that the right of the public to walk the present route needed to be protected, if necessary by the erection of fencing and clearance of the path. As he understood it, no discussion of a diversion of the footpath could take place until the current path was usable.

(22) Mr Powell concluded his remarks by saying that it was both National and Local Planning Policy to preserve the openness of the land. This could only be achieved through better signage and clearance which would enable Footpath SR22 to become part of a well-maintained network that could be enjoyed by all. The objections came from people who knew the area intimately and who particularly value the wonderful view of Shoreham Cross, which had been cut in 1920 and gained even greater significance during the Second World War when Shoreham had been the most bombed village in the country. If the diversion were to be made, it would destroy not only the footpath, but also the village of Shoreham and its heritage.

(23) The Principal Legal Orders Officer explained that Mr Powell's understanding of the legal position was incorrect in one aspect. There was nothing in KCC's Policies which would enable it to insist that a footpath had to be cleared before it could be diverted.

(24) Mrs Lesley Spence (Shoreham PC) informed the Panel that she was the Chair of the Parish Council's Amenities Committee. She had lived in Shoreham for 15 years. She described Shoreham as a special and healthy community which was aware of its heritage.

(25) Mrs Spence went on to say that most of Shoreham lay within an AONB and that walking along the various footpaths was not simply a matter of travelling from one point to another, it was a living part of local heritage. Public Rights of Way should not be diverted unless there was an exceptionally good reason for doing so.

(26) Mrs Spence then asked the Panel to bear in mind that the Landowner would have been aware if the route of the path at the time when he had purchased the property. She recalled that the path had taken the form of a mown track across a meadow and that the small signs on the route had been replaced by KCC signs in 2003. Complaints about obstruction had only arisen in 2007. She considered it essential to maintain the path along its current route.

(27) Mr Nicholas Umney (Chairman of the Footpaths Section of the Sevenoaks Society) said that his role was to help the Society foster and promote the enjoyment of walks in the Sevenoaks District.

(28) Mr Umney said that he supported the diversion which he considered to be preferable in all respects to the original line. He said he was supported in this view by both the Sevenoaks Society Committee and by a number of walkers with whom he had walked the area in question.

(29) Mr Umney explained that he was entirely in agreement with the report author in respect of five of the six criteria within Section 119 of the Highways Act 1980 and as set out in Section 27 of the Officer's report.

(30) Mr Umney turned to the PROW Definitions Officer's conclusion that the proposed diversion would have a substantial negative impact on the enjoyment of the path as a whole. He noted that the report stated that the views of the Shoreham Cross were better from the original route than from the diversion. He said that this was simply not the case.

(31) Mr Umney said that he had recently walked both the route and the diversion and paced out the amount of each route from which views of the cross and of Shoreham Valley could be obtained. The length of the diverted route from which such views could be obtained exceeded by four times the length from which such views could be obtained from the original line. The quality of the views obtainable from the proposed diversion was also at least equal to those on the original line. There were, in addition, some spectacular views still to be had from undisputed sections of the path.

(32) Mr Umney then said that the view was only one aspect of enjoyment of the path. The negotiation of a steep mud bank between Point A and the garden boundary, together with the need to negotiate the garden boundary twice, seriously detracted from the enjoyment of the route when walking the original line. Furthermore, he personally felt uncomfortable and anxious when crossing someone else's garden close to their property. He knew that others shared these feelings. This could be related to anxiety over whether the walkers were going to encounter dogs loose or more generally because of the feeling that they were invading someone else's privacy.

(33) Mr Umney concluded by saying that the diversion was better for the landowner, both more convenient and enjoyable for the public and that there were no other reasonable grounds for refusing the diversion.

(34) Mr John Saynor (Shoreham Society) said that the role of his Society was to preserve the heritage of the village. The network of local Public Rights of Way was very special. The Shoreham Society believed that no existing footpath should be diverted without reason. The house was 24 metres the path and was situated above its level. The legal route passed through a pleasant meadow which the landowner had begun to use. He considered the concern about loose dogs to be unfounded as there would be ample opportunity for children to run away if they were approached by one. The Shoreham Society considered that the view from the main path was the most important reason that the proposed diversion should not be permitted.

(35) Mr Jeremy Aslan (Landowner and applicant) said that the diverted route had been established in 1987 following the obstruction of the original route during that year's hurricane. Mr David Munn, the Area PROW Officer had personally cleared the large tree from this route in 2015, which was the point at which he had first become aware of the official route which ran diagonally across his garden.

(36) Mr Aslan then said that the proposed diversion would afford greater privacy for his family. He had already satisfactorily answered the 4 questions posed by the County Council (*see para (4) above*) and he did not believe that public enjoyment of the whole path would be negatively affected. He asked the Panel to note that his view was supported by the Ramblers and the Sevenoaks Society. He also considered that the diversion would avoid the steep inclines that were a part of the original path. The diverted route was comfortable for walkers and had been used without complaint since 2007. He considered that the logic of the report was based simply on the proposed diversion rather than upon the entire path. He therefore asked the Panel to agree the proposed diversion.

(37) The Area PROW Officer informed the Panel that 2 trees had fallen across the original path in 1987, making it impassable. He had studied aerial photographs from 1945 which showed no route. A mown route was visible in the 1990s which was still visible in 2005.

(38) The Chairman informed the meeting that the Local Member, Mr R W Gough had been unable to attend the meeting but that he had submitted his views as set out in paragraphs 7 to 10 of the report.

(39) During its ensuing discussion of the application, Members of the Panel commented that the diversion had clearly been in place since at least 1987 without any complaint; that the view of the Shoreham Cross was not substantially different to that of the original route; that the route of the diversion was more convenient to walkers in terms of ease of access; and that the diversion overcame the invasion of privacy experienced by the landowner as well as the uneasiness that walkers would inevitably feel when they walked intrusively through a private garden.

(40) On being put to the vote, the Panel unanimously agreed to exercise the County Council's power to make the Order.

(41) RESOLVED that for the reasons set out in (39) above, the applicant be informed that the County Council has agreed to exercise its power to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath SR22 at Shoreham

7. Urgent request to amend the application to register land at The Downs, Herne Bay as a Town or Village Green

(Item 4)

(1) The Principal Legal Orders Officer briefly explained that an application for The Downs at Herne Bay to be registered as a new Town or Village Green had been made in 2009. It had been considered by a Regulation Committee Member Panel in 2011. It had been resolved to refer the matter to a Public Inquiry in order to clarify the issues.

(2) The Public Inquiry had taken place over 8 days in 2011-12. The Inspector had issued her report in 2013. Post Inquiry submissions had been submitted by both the applicant and Canterbury CC. These submissions were still in the process of being resolved.

(3) The Principal Legal Definitions Officer then explained that there was one issue which required a fundamental amendment before the Public Inquiry could be recommenced. This related to the qualifying Locality or Neighbourhood within a Locality. The applicant had originally identified this as the former Urban District Council area of Herne Bay. This identification had recently been challenged by Canterbury CC on the grounds that there had been no such area during the 20-year qualifying period.

(4) The Principal Legal Definitions Officer then said that the current Inspector had advised that the best course of action was for the County Council to agree that the applicant could amend his application so that it relied on an alternative claimed locality or neighbourhood within a locality. All parties agreed with this advice, and he was therefore recommending to the Panel that the applicant should be allowed to argue that the relevant locality was one of the following:-

- The locality of the urban area of Herne Bay;
- The locality of the electoral ward of belting;

- Herne Bay as a neighbourhood within the locality of Canterbury District; or
- The locality of Reculver.

(5) The Panel unanimously agreed to the Principal Legal Orders Officer's request.

(6) RESOLVED that the applicant be given permission to amend the application to rely on the alternative localities set out in paragraph (5) above, with the Inspector's recommendation to the Regulation Authority thereon being included in her report.

Update from the Definitive Map Team

A report by the Public Rights of Way and Access Manager to Kent County Council's Regulation Committee on Wednesday 26th September 2018.

Recommendation:

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

Progress with Definitive Map & Statement applications

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

Section 53 Applications

2 Any person may make an application to the County Council, as the Surveying Authority under section 53 of the Wildlife & Countryside Act 1981, to amend the DMS to add, upgrade, downgrade, or delete a Public Right of Way. The County Council has a duty to investigate every application it receives. Investigation involves undertaking interviews with witnesses and landowners, documentary research and extensive consultation, amongst other things. It is our policy to deal with these applications in order of receipt except where:

the physical existence of the claimed route is threatened by development or,
the resolution of an application would enable the County Council to properly assess or manage public safety or

the claimed route may result in a significant improvement to the network

In such instances a case may be accelerated.

2.1 During the period April 2017 to March 2018, 8 applications were determined, of which 6 were declined and 2 Orders were made and confirmed. There are currently 34 unallocated applications and a current backlog of approximately 3 years. The number of applications received fluctuates with 18 applications being received in 2017 and only 4, to date, in the current year.

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

Claimed Bridleway at Kingsnorth (Steeds Lane). The Order has been submitted for non-confirmation on the basis that the route should be shown as a full highway and therefore not something that can be shown on the DMS. An Inspector having reviewed the evidence has determined that it should in fact be a Restricted Byway and the Order has been amended and advertised: objections have been received to this. This is now being progressed through the written representation procedure.

2.3 The Schedule of Applications is updated on a regular basis and can be located on the County Council's website at:

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

Applications to divert, extinguish or create public rights of way

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

3.1. During the period April 2017 to March 2018, 27 Public Path Orders have been confirmed (including 1 to facilitate the safer crossing of a railway), 1 route has been upgraded through agreement with the landowner and 1 has been created by Order. 47 applications are currently being processed. There are 59 unallocated diversions/extinguishments resulting in a backlog of approximately 2^{1/2} years between the receipt of an application and allocation to an officer.

3.2. There are 2 cases currently with the Planning Inspectorate awaiting determination: -

- Diversion of ER80 & ER81 at Shephedswell, this is to be determined through the written representation process.
- Extinguishment and creation of a new length of DR46 and the diversion of DR47/SD47 at Darenth and Horton Kirby & South Darenth.

3.3. The backlogs for applications to both divert/extinguish public rights of way and to amend the DMS reflect the complex and lengthy procedures to be followed. There is a strong correlation between the number of applications determined and the number of experienced officers available to undertake the work. Additionally, there is no ability to limit the number of applications to amend the DMS that are received in any year. The number of applications can exceed the resource available to determine them. Regrettably the backlogs have grown since the last update. There has been an increase in the number of Town & Country Planning Act 1990 applications. These are given priority over other areas of work.

3.4. To try and reduce the backlog for Highways Act 1980 applications, we have been trialling the use of consultants to carry out this work. Surrey County Council (SCC) has processed 3 applications on behalf of the County Council and whilst this has meant that an additional 3 applications have been allocated, it has still involved much officer time in carrying out site visits, creating templates, providing them with all the information they need, checking reports and Orders etc. However, having reviewed the process, there is still benefit in SCC taking on the applications: they have been able to work within our existing charging regime and currently have capacity to continue with the arrangement. It has therefore been decided to continue with the arrangement and a further 4 applications have recently been allocated to them. We will of course continue to monitor and review this working arrangement.

3.5. The County Council also deals with applications made under the Town & Country Planning Act 1990 to close or divert public rights of way that are affected by development. This work is undertaken on behalf of Ashford, Canterbury, Dartford, Gravesham, Folkestone and Hythe, Sevenoaks, Swale, Tonbridge & Malling & Tunbridge Wells Councils and the Ebbsfleet Development Corporation. A small

number are processed in respect of our own planning functions. The County Council is currently processing 29 such applications. In 18 of the cases the Orders have been made and confirmed and are awaiting certification following the completion of the works on site.

3.6. The Schedule of Applications, which is updated on a regular basis, can be located on the County Council's website at:

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

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

4. This is a means by which landowners can protect their land against any, or further, public rights of way or a village green from being registered as a result of unchallenged public use.

4.1. During the period April 2017 to March 2018, 29 Deposits have been received, a decrease of 8 from the previous year.

Legislative Update/Lost Ways Project

5. Deregulation Act 2015 – The Deregulation Act came into force on 27th March 2015, however the elements in relation to PROW have not yet come into force as we are awaiting the associated regulations and guidance. The latest information from DEFRA is that the regulations should be introduced in the summer of 2019 subject to parliamentary time.

5.1 The potential impacts on the Public Rights of Way & Access Service will be better understood when the regulations are published. However, the main user groups, i.e. the Ramblers and the British Horse Society are preparing for the regulations and in particular the bringing into force of the 2026 cut-off-date. This is where all unrecorded rights of way created before 1949 will be extinguished immediately after 1 January 2026 – subject to certain exceptions:-

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

5.2. In order to deal with what is likely to be a very substantial increase in the number of applications to modify the DMS and to facilitate stakeholder demand to access the County Councils records, the Service has recruited a small team of volunteers. The volunteers undertake initial research of the County Council's public rights of way and highways records in respect of prospective applications and status enquiries. It is hoped that in doing this the pressure on the Definitive Map Team and Highways Definition Teams that would result from numerous enquiries will be managed and that any applications that are subsequently made will be fewer in number and of higher quality.

Applications to register Village Greens

6. There are currently 10 outstanding applications under section 15 of the Commons Act 2006, of which 2 of these are scheduled to go before a Regulation Committee Member Panel in November. Public Inquires are scheduled for 2 applications, one to take place in October and the other in February/March next year and 1 application is currently out to consultation.

Recommendation

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

Contact Officer:

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

Update on Planning Enforcement Issues

Item 7

Report by Head of Planning Applications Group to the Regulation Committee on 26th September 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 23rd May 2018 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 10 'Update of Planning Enforcement Cases' (Exempt report) are:
 - **Ashford Waste Water Treatment Works**, Canterbury Road, Bybrook, Ashford
 - **Mount Pleasant Farm**, Seasalter Lane, Yorkletts, Whitstable.
 - **Mount Pleasant House**, Seasalter Lane, Yorkletts, Whitstable

- **Hawthorn Cottages**, May Street, Herne Bay
 - **Wilmington Academy**, Common Lane, Wilmington, Dartford
 - **Wentworth Primary School**, Wentworth Drive, Dartford
 - **Maypole Community Primary School**, Franklin Road, Dartford.
 - **Land adjoining Long Hill playing field**, Romans Road, Dover
 - **Reserved land to protect highway widening corridor**, Downs Road, Studdal
 - **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
 - **Three Lakes Caravan Park**, Murston, Sittingbourne
 - **Wrotham Quarry**, Addington, West Malling
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 and remit. Action by the County Council in default of other bodies with the necessary powers and remit would be similarly inappropriate.

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 allied public

regulators) to act in a swift and decisive way against alleged planning breaches. Any County Matter action however, must be robust and *intra vires* i.e. within the powers and control of the County Council. This requirement is a critical starting point. The material facts of the case therefore have to be carefully elicited and the planning status of an activity verified, often with the help of advice from specialist barristers. The demand for legal opinion is increasing, which reflects the complexity of cases and related issues of planning jurisdiction.

Operational matters

10. Planning enforcement rests on the 'fact and degree' of cases and planning and legal judgement. Cases must be dealt with on their own individual merits. A judgement is also required in all cases, on the likelihood of planning permission being granted, or not. Any formal actions taken or contemplated must also be proportionate.
11. With all these planning legal disciplines, a significant part of the job is to research the full and accurate facts. Cases also need to be filtered and triaged, according to likely planning jurisdiction, environmental urgency and amenity impacts being caused to sensitive sites and local communities. Actions must further fit within our core responsibilities. This allows for the proper distribution of work among the key enforcement regulators and ensures that any actions taken, with related investment of public funds are secure and robust and not left 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. I reported to the last Meeting that the Government had introduced new tax measures. These allow Her Majesty's Revenue and Customs (HMRC) informed by relevant authorities to pursue individuals, companies and their supporting networks for the alleged evasion of Landfill Tax. The County Council's Planning Enforcement Team has been anticipating and preparing for this move and will wish to play an active part in its use on appropriate cases.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

13. In addition to our general visits to sites, we also undertake routine visits on permitted sites, to formally monitor them under the statutory monitoring charging scheme. They are useful compliance checks against each operational activity and an early warning of any alleged and developing planning contraventions.

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 continues at a pace and to an increasing level of complexity and expectation. Stricter rules on the receipt of cases and more scrutiny over issues of planning jurisdiction are helping to alleviate the pressures on frontline staff. This streamlining will hopefully bring operational and resourcing benefits. At the same time however, true and effective enforcement within the public sector, requires at its optimum, seamless and collaborative working between those bodies charged with such duties. Every effort by the County Planning Enforcement team is made to achieve such links, whom still advise on enforcement strategies, even when cases fall outside of our remit.

Recommendation

16. I RECOMMEND that MEMBERS NOTE & ENDORSE:

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

Case Officers: KCC Planning Enforcement

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Background Documents: see heading.

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