

REGULATION COMMITTEE

Thursday, 24th January, 2019

10.00 am

Council Chamber - Sessions House





AGENDA

REGULATION COMMITTEE

Thursday, 24th January, 2019, 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. Substitutes
2. Declarations of Interests by Members in items on the Agenda for this meeting.
3. Minutes (Pages 5 - 24)
 - (a) Committee: 26 September 2018
 - (b) Member Panel: 26 September 2018
4. Home to School Transport Appeals (Pages 25 - 28)
5. Update on Planning Enforcement Issues (Pages 29 - 32)
6. Other Items which the Chairman decides are Urgent
7. Motion to exclude the public

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

EXEMPT ITEMS

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

8. Update on Planning Enforcement cases (Pages 33 - 60)

Benjamin Watts
General Counsel
03000 416814

Wednesday, 16 January 2019

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, 26 September 2018.

PRESENT: Mr A H T Bowles (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 and Mrs S Prendergast

IN ATTENDANCE: Mrs L Wilkins (Definitive Map Team Leader), Mr R Gregory (Team Leader - Planning Enforcement) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

9. Membership

(Item 1)

The Committee noted the appointment of Mrs S Prendergast.

10. Minutes

(Item 4)

RESOLVED that the Minutes of the Committee meeting of 23 May 2018 and the Regulation Committee Member Panel meetings of 23 May 2018 and 17 July 2018 are correctly recorded and that they be signed by the Chairman.

11. Dates of future meetings

(Item 5)

The Committee noted the following dates for its meetings in 2019/20:-

Thursday, 24 January 2019;
Wednesday, 22 May 2019;
Wednesday, 25 September 2019;
Tuesday, 28 January 2020; and
Wednesday, 20 May 2020.

12. Update from the Definitive Map Team

(Item 6)

(1) The Definitive Map Team Leader summarised the current position in respect of applications to amend the Definitive Map and Statement. The report covered Section 53 Applications; Statutory Deposits; the diversion, extinguishment or creation of public rights of way; legislative updates; and applications to register Village Greens.

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

13. Update on Planning Enforcement Issues

(Item 7)

- (1) The Team Leader – Planning Enforcement gave an update on planning enforcement and monitoring work carried out since the Committee meeting on 23 May 2018. He drew attention to the stricter rules on the receipt of cases and greater scrutiny over issues of planning jurisdiction which aimed to alleviate the pressures on frontline staff.

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

EXEMPT ITEMS

(Open Access to Minutes)

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

14. Update on Planning Enforcement cases

(Item 10)

(1) 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; Mount Pleasant House and Mount Pleasant Farm, Yorkletts, Whitstable; Hawthorn Cottages, Herne Bay; Wilmington Academy, Wilmington, Dartford; Wentworth Primary School, Dartford; Maypole Community Primary School, Dartford; Roman Road, Dover; Downs Road, Studdal; Fleetmix Ltd, Northfleet; Car Wash, London Road, Gravesend; Stockbury Valley, Stockbury; Water Lane, Headcorn; Little Neverend Farm, Ulcombe; Environment First, Lested Farm, Chart Sutton; Thirwell Farm, Hernhill; Oare Creek, Faversham; Three Lakes Caravan Park, Murston; and Wrotham Quarry, Addington.

(2) The Team Leader – Planning Enforcement informed the Committee of the views of Mrs S V Hohler in respect of Wrotham Quarry, Addington, supporting the Enforcement Strategy.

(3) RESOLVED that the enforcement strategies outlined in paragraphs 4 to 15 of the report and in the Schedule attached to the report be endorsed.

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KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Belmont Ground, Belmont Road, Whitstable CT5 1QP on Wednesday, 26 September 2018.

PRESENT: Mr A H T Bowles (Chairman), Mr I S Chittenden, Mr P M Harman, Mr P J Homewood and Mr J M Ozog

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

UNRESTRICTED ITEMS

8. Application to divert part of public footpath CW80 from the "at grade" foot crossing to a stepped bridge at Whitstable.

(Item 3)

(1) The Panel Members inspected the at grade crossing before the meeting. This visit was also attended by representatives from Network Rail and some 12 members of the public.

(2) The Definition Officer introduced the report by explaining that the County Council had received an application from Network Rail to divert public footpath CW80 at Whitstable. The stated grounds for the application were that it was in the interests of safety to remove the "at graded" foot crossing from the railway line and to run the path over a stepped bridge. Notification of the intended construction of the new footbridge was also notified to Canterbury CC's Planning Department in May 2017.

(3) The Definition Officer continued by saying that the last risk assessment carried out by Network Rail in October 2016 had assigned the crossing a rating of C4, making it high risk. A number of incidents had also been recorded at the crossing over a number of years, including fatalities.

(4) The Definition Officer then referred to the responses to informal consultation. It had become clear that there was a large amount of opposition, not so much to the closure of the crossing, but rather to the proposed bridge and its impact on the local community and environment. As the majority of people considered that the crossing needed to be closed, the County Council undertook a further consultation on a complete extinguishment of the crossing.

(5) The Definition Officer went on to explain the legal tests. She said that the legislation relating to the extinguishment of a public path which crossed a railway, otherwise than by tunnel or bridge was contained within Sections 118A

(extinguishments) and 119A (diversions) of the Highways Act 1980. She quoted the relevant extracts as follows:

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

(ii) *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.*

(6) The Definition Officer added that there were two relevant extracts of Government Guidance contained within Rights of Way circular (1/09). The first of these set out that *“the order may extinguish the right of way on the crossing itself and for so much of its length as the authority deems expedient from the crossing to its intersection with another highway over which there subsists a right of way.”* The second specified that *“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.”*

(7) The Definition Officer informed the Panel that consultations had been carried out as required by the Highways Act 1980. She added that some members of the public had informed her that they had not seen the notices on site. She then referred to her written report which summarised the responses received.

(8) The Definition Officer moved on to an assessment of the criteria for the diversion of a public right of way as set out in Section 119 A of the Highways Act 1980. The first of these was whether it was expedient in the interests of the safety of users or likely users of the crossing. She said that although not everyone shared this opinion, most of the consultees agreed that the crossing was not safe. She therefore concluded that this test was met.

(9) The second test was whether it was reasonably practicable to make the crossing safe for use by the public, and what arrangements had been made for ensuring that, if the order was confirmed, any appropriate barriers and signs were erected and maintained. The Definition Officer said that following the tragic fatality of a 14-year-old girl in February 2015, the Coroner had raised a number of concerns. Whistle boards were present at the crossing which provided users with a warning time of 9.8 seconds when the driver sounded his horn. It was not possible to relocate them in order to provide a greater warning time as they needed to be sited within a certain distance of the crossing to be effective. An audible warning system called COVTEC was installed at the crossing in January 2016. This device replicated the sound of a train horn directly at the crossing and worked by using a laser to detect the approaching train. This system was a “stand-alone” and was not operated by the train driver. Whilst this had reduced

the risk to users of the crossing by approximately 10%, the crossing continued to pose a high risk.

(10) The Definition Officer continued by saying that Network Rail had installed low level blue solar powered carriage lights in February 2016 along the edge of the crossing decking due to the absence of any dedicated lighting being sited over the crossing. Other measures such as visual warning systems, vegetation clearance, permanent speed restriction and Miniature Stop Lights had also been considered in the application, but Network Rail was not able to identify any other works that could be undertaken to improve the safety of the crossing.

(11) The Definition Officer then turned to the Tests set out in Circular 1/09. The first of these was whether the right of way would be reasonably convenient for the public. She said that consultation responses evidenced that the route was both a utility and a recreational route. The proposed route would run over a new stepped bridge with 36 steps on each side. The existing route had a kissing gate at either side of the crossing but had no steps or gradient. Consultation responses indicated that a stepped bridge would prevent some people from being able to use the route at all. The time taken to traverse the bridge would increase journey time by about 3 or 4 minutes. This additional journey time was not a factor that people had commented on. Accordingly, this aspect of the proposal was not considered to be substantially less convenient. Canterbury CC's Planning Committee had passed the plans for the bridge in terms of design and location but had also passed a motion instructing the Head of Planning to write to the County Council expressing its strong opinion that the existing nearby pedestrian level crossing should be closed. The Planning Committee, although granting prior approval for the proposed footbridge to be provided did not express any strong as an alternative to the crossing. Its Members noted that there were other routes, including an existing footbridge that provided access for people who wished to walk from the south side of the railway towards the town centre or beach.

(12) The Definition Officer considered the next test by saying that the proposal would have no impact on the land served by the existing right of way. Although, the new path would still be within the ownership of Network Rail and would not specifically affect that land, the consultee responses indicated that many people considered that there would be a negative environmental impact visually on the neighbourhood. It was also considered that the bridge would affect the privacy and value of at least one property.

(13) The Definition Officer continued her consideration of the tests set out in the Circular by saying that the diverted way would have little impact on the rights of way network as a whole. The termination points would be unchanged and there was relatively little added distance as a result. Nevertheless, the bridge would possibly exclude some walkers who were currently able to use the crossing. In terms of the safety of the diversion, there had been negative responses from some consultees, as steps could constitute a hazard in their own right, especially when wet or slippery. There was, therefore, a concern that the proposed new route over the stepped bridge was not significantly safer than the level crossing.

(14) The Definition Officer concluded in respect of the application to divert the path that although the Tests under Section 119A of the Highways Act had been met, those under Circular 1/09 had not. This was because the proposed new route was to run over a stepped bridge which included its own risks and would exclude some members of the public who were currently able to access the existing route. When taken in conjunction to the environmental and other negative aspects, she concluded that, on balance, an Order should not be made.

(15) The Definition Officer then said that as there was heavy opposition to the diversion over a bridge but still support for the closure of the crossing, it had been considered that a consultation should take place on the extinguishment of the path, with no alternative being provided. Accordingly, an informal consultation was undertaken with all those who had been consulted or who had commented about the diversion proposal.

(16) The Definition Officer said that when applied to this new option, the Tests under Section 118A of the Highways Act in regard to the safety of the crossing were met for the same reasons as they had been for the original application. It had become evident that, with the exception of a small minority, the crossing was considered to be unsafe. Two diversion proposals had been explored and rejected. This included a proposal made by the Whitstable Society, which had been strongly opposed by the residents of Alexandra Road.

(15) The Definition Officer explained that if Public Footpath CW80 were extinguished, Public Footpath CWX40 would become a cul-de-sac which would need to be simultaneously extinguished in accordance with Section 118 (2) of the Highways Act 1980.

(16) The Definition Officer confirmed the recommendations made in paragraph 44 of the report before explaining that it was likely that the Order would attract objections. If objections were received and the Order was submitted to the Secretary of State for the Environment, Food and Rural Affairs, it was recommended that the County Council should take a neutral stance at any Public Inquiry.

(17) Mr Clive Robey (Network Rail Level Crossing Manager – South East) said that Network Rail worked to set criteria when identifying risks and put in place those safety measures identified by the process. Its Asset Inspection Team visited the Glebe Crossing every 6 months as part of its project to establish a detailed catalogue of its asset base (particularly in respect of switches and crossings). The Team was able to use very modern technology to capture asset data electronically and transfer it to Network Rail's central Ellipse system.

(18) Mr Robey said that the rights of way crossings over railway lines dated back to the period when railways were first constructed in the 1840s. There were currently some 6,000 level crossings in the UK. Network Rail had to follow a due and consistent process in order to establish which of these constituted a significant risk. This involved the use of the All Level Crossing Risk (ALCRM) Model which took into account the number of trains and pedestrians who were using it. The algorithms built into the ALCRM gave a combined rating of A to N and 1 to 14 (with a score of A1 representing the highest risk). The Glebe

crossing had scored C4, making it high risk. Factors built into the ALCRM were the number of incidents, including near misses which were recorded whenever the driver had to use the emergency brake. Such narrative Risk Assessments were required by Law, and it was Network Rail's duty to make the use of level crossings safe for the public.

(19) Mr Chittenden asked whether Network Rail had considered the suggested diversion proposal made by the Whitstable Society. Mr Paul Donald (Network Rail Business Development Manager) replied that Network Rail's consideration of this option had been informed by the results of public consultation as well as the professional views of the British Transport Police.

(20) Mr Ashley Clarke (Local Member – Canterbury CC) informed the Panel that he was the Vice-Chairman of Canterbury CC's Planning Committee. He was normally a keen supporter of Village Greens and Public Rights of Way. In considering this particular application he had examined the circumstances which had led to it as well as the views of the local residents.

(21) Mr Clarke described the crossing as a magnet for death, misadventure and misuse. The right to life was the greatest right of all and it was essential to protect the vulnerable. He said that he was aware of some of the ideas which were aimed at making the crossing safe. These included the installation of automatic locking gates. He asked the Panel when considering this suggestion to bear in mind the length of time that it could take to cross the line.

(22) Mr Clarke also asked the Panel to consider the impact on those who witnessed deaths at the crossing or who were closely related to the victims. He himself had been a policeman 30 years earlier at which time he had needed to inform the family of someone who had died. He asked the Panel to consider his detailed comments in paragraph 35 of the report and concluded by saying that extinguishment of the crossing would be an act of human kindness and compassion which should prevail.

(23) Mr Graham Cox (Whitstable Society) addressed the meeting by summarising a detailed document that he had prepared for the Panel Members. He said that the Whitstable Society was the official Planning Consultee for the unparished town of Whitstable. It had 250 members and held regular meetings as well as open discussions with the public. It liaised closely with Councils and their Councillors.

(24) Mr Cox said that there were very strong reasons for postponing a decision because Network Rail had not yet produced full and unbiased information on the alternative courses of action that were open to it under existing regulations, as it was required to do. This needed to include a full workup of the option of installing safety equipment and of building an underpass. The second option should set out *location-specific* information rather than the "boiler plate response" that had been given by Network Rail up to this point. For example, there would be no drainage problem as Network Rail had stated. If neither of these options was agreed by the Panel, the Whitstable would reluctantly support the option of a bridge instead.

(25) Mr Cox said that the third option that the Panel could consider was that of a diversion to the existing pedestrian bridge to the west via a footpath on Network Rail land across the tracks from the Saxon Shore Way. This would avoid the impact that a new bridge would have on the lives of neighbours and, as a by-product, shorten the distance to walk to Prospect Field and allow people who couldn't use bridges to get to that park by the shortest possible route. One of the reasons put forward for rejecting this solution was the fear of anti-social behaviour. Local people, however, said that there was no such problem.

(26) Mr Cox cited the Railway Regulations which required Network Rail to have installed practicable safety measures to increase safety to an acceptable level using the safety fund that they proposed should pay for a new pedestrian bridge. He did not agree that Network Rail had exhausted all the options as they had refused to install flashing lights or a locked gate that could be linked to the existing warning system. The funding for such safety measures would come from the same central government ring-fenced fund which would have been used for financing the new bridge.

(27) Mr Cox referred to public rights of way regulations which stated that the Secretary of State could only confirm a rail crossing diversion if he was satisfied that it was reasonably practical to make the crossing safe for use by the public. He did not accept that Network Rail could demonstrate that it had adequately considered the question of whether the crossing would be unacceptably dangerous *after* the installation of normal safety measures. *Mr Cox' written material contained a photograph of the crossing in Canterbury with gates, lights and CCTV.*

(28) Mr Cox said that *Sustrans* had advised that the cost of providing a bridge or an underpass was the same. Network Rail had not produced any analysis of cost even though an underpass would avoid the problems of accessibility that were associated with the bridge.

(29) Mr Cox concluded by considering the option of a new path to the existing bridge. He said that it could be easily accommodated because there would be a large gap between the security fence on the side of the new path and the back of the gardens. It could be easily woven around significant shrubs and trees, so that only grass would be used for the path. He believed that Network Rail had conducted a consultation that was bound to reach a negative conclusion because it was limited to those houses near it who might believe that their property values would be adversely affected. The neighbours had also not been told that they would be able to access this path and, for the reasons previously stated, the concerns about anti-social behaviour appeared to be out of kilter with the reality of the proposal. The rest of the public (who would have benefitted) were excluded from the consultation and had been unaware of the suggestion.

(30) Mr Robey from Network Rail asked the Panel to note that automatic gates needed to be monitored by a Signaller. Public rights of way crossings did not have Signallers and there was always a risk of breakage with technology. At this particular crossing, there would be no way of knowing whether anyone was trapped when the gates were closed. He added that there had been misuse and

fatalities (including suicides) despite multi stop lights being installed at Winchester. The concern was that people would cross the railway line regardless.

(31) The Chairman noted that Mr Graham Wanstall (Open Spaces Society) had wished to speak to the Panel but was unable to be present. He agreed that a letter he had written should be read out to the meeting.

(32) Mr Wanstall's letter stated that the Open Spaces Society strongly objected to the extinguishments. Not enough consideration had been given to the history of this crossing and to common sense. There had only been a problem in recent years at the crossing which had been in place for 150 years. A tiny number of people did not observe the rules and respect the obvious danger of trains and electricity. It was perverse to close a busy popular railway crossing just because it was busy and a small minority abused the rules.

(33) Mr Wanstall's letter concluded that if the safety criteria applied to the crossing were to also be applied to roads, most of them would be closed. If everyone stayed indoors there would be no risk. There was no risk if the rules were observed and its dangers were respected, as these dangers were obvious to all.

(34) Mr Peter King described himself as a resident of Alexandra Road. He said that the residents who lived in this private road broadly welcomed the closure of the crossing. Mr King then said that although the Whitstable Society claimed that the gap between the fences and the back of the houses would be 8 metres, it was in fact only 1 metre in parts. If a new path was put in place as the Whitstable Society advocated, it would create an un-policed corridor. He added that the bridge to which the proposed footpath would lead was already covered in graffiti and was known as a venue for drug dealers. If the at grade crossing were closed without the provision of a bridge, KCC would need to discuss the impact on the by-way with the local residents.

(35) Mr John Martin said that his house backed onto the area proposed for a diversion by the Whitstable Society. He opposed this plan and supported the extinguishment of the at grade crossing. If the Whitstable Society's proposed diversion were created, it would lead to further littering and graffiti. It would also become a rat run for mopeds. It would also impact negatively on the bats and slow worms. He said that the Whitstable Society had never consulted the local residents on their proposed diversion and asked the Panel to reject that particular option for the reasons set out on paragraph 39 of the report.

(36) Mr Peter Halfpenny said that he was a local resident and former City Councillor. He and his wife used the crossing at least four times a day for dog-walking.

(37) Mr Halfpenny then said that it was reasonable for residents to question the safety of the crossing after the tragic event in 2015. It was also perfectly understandable that some people would campaign for its permanent closure. He believed, however, that the very real safety concerns needed to be addressed "head on."

(38) Mr Halfpenny continued that if a pedestrian were killed or seriously injured at a road pedestrian crossing or at a traffic light-controlled junction, it would not normally result in a call for the pedestrian crossing or junction to be closed. There would, instead be an accident investigation which might well conclude that the audible and visible signalling should be improved and upgraded. The same approach should be adopted in this case.

(39) Mr Halfpenny went on to say that Network had installed an audible warning system following the 2015 accident. This was working well, in his opinion. A horn-type tone would sound at a point when a train was approaching, echoing the sound of the train horn itself. This was usually sufficient, although maybe not as effective for those with hearing difficulties. He believed that the horn should be augmented by a corresponding warning light, perhaps in the form of a “red man.” He could see no reason (despite the arguments produced by Network Rail) why a visual warning could not be triggered in the same way and at the same time as an audible signal. There was no reason why the cost should increase to a prohibitive level.

(40) Mr Halfpenny then said that the introduction of lockable gates should be considered. These would prevent pedestrians from accessing the track once the signals warned of an approaching train. These gates would be wider than “kissing gates” and would therefore be able to accommodate wheelchairs and buggies, improving accessibility for those currently impeded from using the crossing at all.

(41) Mr Halfpenny said that he opposed any alternative proposal involving bridges (whether new or existing) because those with health problems would be disadvantaged – especially those with breathing difficulties, heart problems and restricted mobility. Many older people lived in Glebe Way and used the crossing as a short cut to the town. Their alternative route down the Canterbury Road and under the railway bridge would take them along cracked and narrow pavements and would subject them to high levels of traffic air pollution.

(42) Mr Halfpenny concluded by saying that this was an era when more sustainable modes of transport were being encouraged and developed. It seemed contrary to logic to advocate the permanent closure of a Public Right of Way that had existed for the best part of two centuries. He believed that it should be preserved as a community asset for the benefit of this and future generations.

(43) Mr John Reed said that he had used the crossing since 1969 when he lived in Glebe Way. He had used the crossing twice daily in order to get to the station or the town centre. Since 1982, he had lived in Canterbury Road which was 3 minutes way from the crossing which was his preferred route to the town centre. His mother had moved to Glebe Way in 1986, largely because the crossing provided an easy access to the town centre.

(44) Mr Reed said that there was always a risk whenever pedestrians and vehicles shared the same space. Some of the incidents at the crossing had been catastrophic. Everyone had the deepest sympathy for those involved and their families. The 33 incidents between 1998 and 2016 included trespass, dumped

rubbish and equipment failure. This total should be compared with the likely number of 1.3 million foot crossings in those years (using Network Rail's estimate of 201 daily crossings). It was a paradox that the more people who used a crossing, the higher the risk rating – and the greater the number of people disadvantaged by the closure.

(45) Mr Reed went on to say that safety was of paramount importance. He asked whether Network Rail had done enough. The only apparent safety improvement had been the audible warnings by the train driver and a prior automated sound warning. He asked why there could not be electronic visual warnings such as flashing lights. He also asked whether the use of CCTV had been investigated. Canterbury CC's use of this facility had been lauded for its 24-hour coverage and efficiency. It could surely be extended to the crossing. Automatic locking gates, as used elsewhere, would improve safety if they were accompanied by an escape button for anyone caught on the crossing (as used in public toilets).

(46) Mr Reed then turned to the informal consultation process. He had attended Network Rail's consultation meeting in October 2015 and had subsequently exchanged emails with their representative. Although his preference was for the crossing to remain with significant safety enhancements, he had been content to accept a diversion via an on-site footbridge. He had therefore made no comment in response to the KCC consultation of July 2017 or on the planning application to Canterbury CC. He now accepted that this might have been a mistake. He had assumed that no diversion would mean no change. The Officer recommendation to extinguish CW80 without diversion (contrary to Network Rail's application) had come as a surprise. It seemed that KCC's informal consultation subsequent to July 2017 and the Canterbury CC Planning Committee meeting had been limited to those who had originally commented. Having only consulted with those groups who had opposed the bridge, it was easy to see why the Officer recommendation was now to extinguish the path without a bridge. An unfortunate effect of this process, however, had been that those who had not originally commented were not consulted again. This could include the 201 daily users of the crossing who were likely to want the foot crossing to remain or to have a bridge diversion. He had spoken to other users of the crossing over the previous week. None of them had been aware of the potential extinguishment. All of them wanted CW80 to remain as a crossing with safety improvements or with a bridge diversion.

(47) Mr Reed continued by saying that the degree of inconvenience to pedestrians arising from the extinguishment would depend on the start/end points of their walk. There were two possible routes. One was from the southern point of CW80 accessing the existing bridge 225 metres to the west. This would potentially be a long detour via isolated paths which could be wet and muddy and uninviting at night. His wife would only consider using this route in daylight. The other would be to access the town centre by walking south east on the Glebe Way path, turning north east into the Canterbury Road, northwest onto Oxford Street and beyond. The pavements along this route were narrow and broken with lorries and buses clipping the kerb. This route would be unattractive and also highly polluted. Canterbury CC's Sustainable Transport Forum was seeking "to identify low pollution pedestrian routes." This route would achieve the opposite.

(48) Mr Reed summed up his presentation by saying that he objected to the extinguishment of CW80. His preference would be for very significant safety improvements to the current crossing. He would also find an on-site bridge diversion to be acceptable.

(49) Mr Nick Greenan said that he wanted the crossing to remain open but was not opposed to any existing or supplementary alternative routes. He was concerned that the report provided to the Panel appeared to be trying too quickly to zone in on closure and diversion without proper justification.

(50) Mr Greenan said that there were three dynamics at play. These were the fear of harm; business interests; and local democracy. He addressed each of these in turn.

(51) In respect of “Fear of harm”, Mr Greenan said that he and his wife had lived in Whitstable with its myriad paths to the sea for 30 years. His mother-in-law used to live in Clifton Road, yards from the crossing, and had used it safely with his daughter for almost 20 years until her death. They had never experienced any problem using the crossing in all that time. He said that he was very respectful of the tragedy that had occurred and its impact on the family but was also mindful of the reasons that people and their communities could be instinctively wrong about risk. Professor Hans Rosling called the “four false instincts”: The *negativity instinct* (that things might be getting worse); the *straight line instinct* (that the short-term data might be predicting high numbers of deaths); the *fear instinct* (the fear of physical harm being heightened when a loved one was harmed or when there was media focus on the event; and the *blame instinct* (the urge to find a clear, simple reason for why something bad had happened and to absolve oneself of responsibility for it).

(52) Mr Greenan said that the issue at the crossing was not simple as no-one was singly to blame for any of the tragedies. He described the data as “noisy” not smooth and said it needed to be scrutinized, in order to moderate the perceived urgency to act hastily in the face of fear.

(53) Mr Greenan said that he was a local Police Detective Inspector and that his role involved investigating and reporting on unnatural or sudden deaths. He had been on-call and attended one of the suicides at the crossing in 2011. He therefore had a degree of professional insight in dealing with death and mental health. He had been surprised at a comment made recently by a local lady to the effect that she had “lost count” of the number of fatalities at the crossing. When he had pressed for the scale of this presumably large number she could not recall how large it was and finally dismissed his question by saying that ‘the number was “irrelevant”’. He said that he had remembered a period when there had been three deaths in relatively quick succession, but not a number so large as to lose count of its scale. He had therefore asked himself a number of questions and had established that there have been 4 deaths in the last 20 years, three of which had been suicides. He agreed with Network Rail that suicides could never be prevented. There were more suicides resulting from overdoses of prescribed mental health medication than on the railway or from bridges and cliffs. Anecdotally, this was demonstrated on New Year’s Day when he had attended a report of a man seen to jump off the cliff at Dover. Three bodies had been found.

He added that more people were killed on roads or died from cancer and that more suicides and incidents occurred on open station platforms.

(54) Mr Greenan said that what he meant by “fear” was the understandable but emotive fear of harm, without the information to contextualize the risk, and without identifying the real risk-multipliers such as intoxicants, mental health or use of head-phones or a mobile phone. He said that there were specious references in the report to percentages and braking distances but at speeds of 30mph the high-harm consequences of being struck by a locomotive, lorry, bus or car were broadly comparable. The report did not sufficiently set out the likelihood of a death occurring.

(55) Mr Greenan moved on to consider the question of “Business Interest.” He said that Network Rail did an excellent job of managing the railway infrastructure. They operated under commercial pressures, including the minimization of costs; the maximization of returns for reinvestment in the railway; and the restrictions imposed by the government on what they could charge the private railway companies. They were also governed by various legislations and legal pressures from both staff and the public to improve safety. Following the latest tragic death, the Coroner’s Regulation 28 Report had compelled them to simply implement the obvious safety improvements extant since the historic suicides.

(56) Mr Greenan said that he had visited the crossing during the previous week and seen that Network Rail had commendably installed blue LED deck-lighting to highlight the safe path, improved signage, cut back foliage and resited whistle boards and had also installed COVTEC remote sensors and a klaxon at the crossing.

(57) Mr Greenan said that the appended report from Nicola Mee, Network Rail’s Liabilities Negotiations Advisor appeared to focus on the false premise that the risk was unmanageable and that the only cost-effective solution was the one proposed. The report had included what he considered to be a peculiar observation that warning lights were at least equal to, or more expensive than, bridges to build and maintain. He said that it was perfectly understandable that in pursuit of the absolute avoidance of any liability the easy and cheap solution proposed was extinguishment of the crossing. Nevertheless, cost-effective risk reduction measures were available. These included POGO gates, CCTV and red/green sentinel post warning lamps. These options had been ruled out by Network Rail on the basis that the cost of these measures was commercially prohibitive. He asked to respectfully suggest to the Panel that a more measured response than closure or diversion was feasible.

(58) Mr Greenan then considered the theme of “Local Democracy”. He said that the network of paths and alleyways was an intrinsic part of the character of Whitstable and its quality of life. The railway had arrived in 1860 and was originally unfenced. There had always been agreement about the need to mitigate against the risk of the railway dividing the community north and south of the line.

(59) Mr Greenan went on to say that he could hear the train klaxon all year round from his home on the far side of Seasalter golf course but that he had not

been included in the postal survey because his home was over 400m away as the crow flies. He added that the report negatively highlighted an incident when there had been 50 people at the crossing. This had, however, been a protest to keep the crossing open rather than a reason to close it. He said that these two factors indicated that there was a democratic deficit.

(60) Mr Greenan continued that a shift in perspective was needed. Whitstable's public rights of way did not cross the railway. It was the railway which cut through the public rights of way. Closing or diverting a PROW was a decision which rightly merited deep consideration of the wider implications for local democracy. Caution was needed before giving permission to an agency to impose unnecessary restrictions and inconveniences upon local people rather than impacting upon that agency's profit margin.

(61) Mr Greenan said he acknowledged the provisions of the Equalities Act in respect of what a structure or route should provide. The suggested alternatives, however, actually reduced the ability of some older but still-mobile citizens to cross the railway line. Any change should at least maintain or improve, rather than degrade the access currently enjoyed by differently-enabled people. The diversions added 9 or 10 easterly or 14 minutes westerly additional walking for an average adult. The suggested alternate routes were not currently maintained to an adequate standard. There were uneven surfaces and choke-points where pedestrians were forced out into traffic. If only half the 200 trips identified in the video surveys were conducted each day this would equate to local residents between them walking an annual average of 354 days.

(62) During the previous week, Mr Greenan said that he had walked to the pedestrian rail crossing in Cuxton where he had spoken to two rail safety operatives who worked the North Kent line and carried out trackside safety maintenance. The Cuxton crossing was similar to the Glebe Way crossing as it was an unmanned crossing of a twin-rail, bi-directional track. It was also similar to Glebe Way in that it had a bend in the track and a remote klaxon alert to augment the whistle-boards. Unlike Glebe Way it now had the latest hi-vis reflective safety signage, a brightly painted emergency telephone and two red-green sentinel post warning lamps with audible alarms.

(63) Mr Greenan concluded in summary that fear accompanied by a media focus on traumatic but rare incidents needed to be moderated with a mature assessment of the data over time. There had been no deaths since the safety enhancements, so the data did not justify closure. Business interests wanted a minimum cost solution which simultaneously minimized exposure to reputational risk. This had led to an optimal solution being ignored because of the cost implications for the profit margin. The crossing at Cuxton showed how sentinel warning lamps could make a sensible and cost-effective improvement to safety at Glebe Way. Closing or diverting PROWs was inimical to the very nature of Whitstable town. The additional walking burden unfairly placed on local people in the face of significant local opposition, in addition to the replacement being non-Equalities Act compliant contributed to local perceptions of a democratic deficit.

(64) Mr Greenan asked the Panel to reject the closure/diversion request and to refer it back to Network Rail to enable them to give full consideration to the

provision of sentinel warning lamps in line with what he had seen at the crossing in Cuxton.

(65) Mrs Heather Wheeler said that she had patiently listened to the debate. She asked the Panel to consider the effect of her daughter's death in terms of the impact on her family and friends. The report covered facts and figures, but she wanted to describe the human side.

(66) Mrs Wheeler described her daughter Sacha as funny, warm, loving, clever and very musically talented. At the time of her death, she had been in Year 9 at Simon Langton Grammar School.

(67) Mrs Wheeler said that on Sunday, 8 February 2015 she had been preparing for the Kaiser Chiefs Concert. They had walked around Whitstable on a very cold day. Sacha had then gone for a long walk, wrapped up well. Mrs Wheeler had called her at 4.30 to say that dinner would be at 6. Her husband had called her at 5.30pm to see if she was on her way back. The train left Faversham at 1746, arriving at Glebe Lane at 1748. At 6 o'clock (when they could not contact Sacha) the electric line was turned off and Sacha was dead. Mrs Wheeler had rung the Police at 6.45. At 1945 they had met the Ambulance and the Transport Police who had Sacha's mobile phone in a plastic bag.

(68) Mrs Wheeler said she could not accept the argument that this was one life. She said that Sacha's death had broken the hearts of her friends, many of whom were present at this meeting despite its inconvenient timing. The family had not been able to see Sacha's body for 10 days. Later on, she had spoken to the paramedics who said that they had known that she was a child. One of the passengers (an engineer) said that he had not heard the horn.

(69) Mrs Wheeler referred to the *UN Convention on the Rights of the Child*, underlining its Health and Safety provisions (Article 3). She said that there was a responsibility to the children of the 5 primary schools in the area.

(70) Mrs Wheeler said that it was the children and the elderly who were the most vulnerable. They needed a safe alternative. The roads were provided with road humps, seat belts and a 20 mph speed limit in certain areas. These were all aimed to prevent deaths. At the Glebe Lane crossing there were 750 volts running along the line which catered for high speed trains. Yet the only protection offered was a closed gate. Some were objecting to the inconvenience of extinguishing the crossing. Her concern was for the lives of the young and vulnerable who were the Future and needed a safe place to live.

(71) The Chairman invited comments from those who had not yet spoken or who wished to speak again. The points made were:-

(a) Mr Robey said that the alarms at the Chichester crossing went off for 40 seconds. Yet members still ignored them and the flashing lights.

(b) The crossing was unsafe and had to be closed. There also needed to be a bridge or an underpass at Glebe Lane as the alternative route would take people down the Canterbury Road to the Belmont Road traffic

lights. The pavement was tiny, which was unsafe due to the large number of articulated lorries.

(c) A retired electrical engineer said he used the crossing which dated back to Victorian times and was a disgrace. What was needed was a modern-style crossing with entrance control technology such as existed in all towns. As there were no cars at this particular crossing, it should have gates that were operated by a button with an appropriate time delay as well as an escape override system. This would be a simple system to install and would also prevent people from straying onto the track by accident. If this system proved to be impractical for any reason, there should be an underpass, which was far safer than a footway. Network Rail should be obliged to properly research and cost an appropriate safe solution.

(d) A resident said that she had lived in Whitstable since 1966 and had seen many deaths at the crossing. Footpath CWX40 was never used and had become overgrown due to lack of maintenance.

(e) Mr Robey explained that any driver who was involved in an accident at the crossing was automatically relieved of duty for Health and Safety reasons.

(72) The Public Rights and Access Manager reminded the meeting that the Whitstable Society's Alexandra Road solution was not a matter that the Panel would be able to determine. He then said that if an Order was made, it would be advertised in the local press and on site. Any objection or representation had to be submitted to the Secretary of State who, in considering rail crossing extinguishments, could, by order, require the rail operator to provide a tunnel or bridge. *(Following the meeting, the Public Rights and Access Manager confirmed that this power was set out in the Transport and Works Act 1992 section 48).*

(73) Mr J M Ozog moved, seconded by Mr P J Homewood that the recommendations contained in the report be adopted.

(74) Mr Ozog agreed to accept an amendment from Mr I S Chittenden that the Local County Councillor be made aware of the concerns expressed during the meeting about the state of the various footways in the vicinity of the application site.

(75) On being put to the vote, the motion was carried as amended by 4 votes to 1

(76) RESOLVED to:-

(a) decline to make an Order to divert public footpath CW80 where it passes over the "at grade" foot crossing to a stepped bridge at Whitstable as set out in the original application;

- (b) make an Order to extinguish public footpath CW80 where it passes over the “at grade” foot crossing at Whitstable and to amend the Definitive Map and Statement accordingly;
- (c) make an Order to extinguish public footpath CWX40 which runs from Glebe Way to public footpath CW80 (as the extinguishment of CW80 will mean that it is not needed) and that the Definitive Map and Statement are amended accordingly.
- (d) make the two extinguishments set out on (b) and (c) above part of the same Order;
- (e) take a neutral stance at any Public Inquiry if objections are received and the Order is submitted to the Secretary of State for the Environment, Food and Rural Affairs; and
- (f) make the Local County Councillor aware of the concerns expressed during the meeting about the state of the various footways in the vicinity of the application site.

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By: Head of Democratic Services
To: Regulation Committee – 24 January 2019
Subject: Home to School Transport Appeals update
Classification: Unrestricted

Summary: To provide Members with an overview on Home to School Transport appeal statistics for the period between 1 January 2018 to 31 December 2018 and a brief comparison with transport appeals statistics from 2010 to 2017.

1. Home to School Transport Appeal Statistics 2018

(1.1) For the period between 1 January 2018 to 31 December 2018 a total of 165 individual appeals were considered by Member Transport Appeal Panels of this Committee. 87% were upheld at least in part (e.g time limited assistance) and a breakdown of these appeals on a month by month basis is set out in Appendix A along with a comparison with appeals held in 2010 to 2017.

(1.2) There are a further 10 appeals that are still waiting to be heard which are scheduled for February 2019.

(1.3) It is interesting to note that in 2018 57% of the total number appeals were heard between August – 31 December 2018.

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

- Financial hardship
- Health & medical need
- No cost to the Council
- Temporary accommodation
- Family circumstances
- Circumstances of the child
- Childs safety
- Review cases

2. Transport Appeal Statistics – 2017

(2.1) For the period between 1 January 2017 to 31 December 2017 a total of 191 appeals were considered by Transport Appeal Panels. 53% were upheld at least in part (e.g. time-limited assistance).

3. Local Government & Social Care Ombudsman

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

(3.2) During the last two years, 13 complaints were received with 2 faults being found which were remedied in the form of a fresh appeal being arranged and a financial adjustment being issued to the parent. The LGSCO provide a breakdown of their findings at <https://www.lgo.org.uk>

4. Recommendation Members are asked to note this report.

Appendix A – Home to School Transport appeal table

Andrew Ballard

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**TABLE 1
HOME TO SCHOOL
TRANSPORT APPEALS -1 JANUARY – 31 December 2018**

Month	Upheld	Not Upheld	Total Heard	% Upheld
January	9	10	19	47%
February	4	9	13	31%
March	3	8	11	27%
April	4	3	7	57%
May	5	1	6	83%
June	0	0	0	0
July	11	4	15	73%
August	13	15	28	46%
September	7	8	15	47%
October	8	8	16	50%
November	12	4	16	75%
December	11	8	19	58%
TOTALS	87	78	165	53%

**TABLE 2
HOME TO SCHOOL TRANSPORT APPEALS - 2010-2017**

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

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Update on Planning Enforcement Issues

Item 5

Report by Head of Planning Applications Group to the Regulation Committee on 24th January 2019.

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 26th September 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, leading or advising upon. These vary in their degree of complexity and challenge. The level of involvement of the County Council also varies, according to enforcement jurisdiction 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**, Bilsington, Ashford
 - **Personnel Hygiene Services Ltd**, Kingsnorth Industrial Estate, Ashford
 - **Mount Pleasant Farm**, Seasalter Lane, Yorkletts, Whitstable.

Update on Planning Enforcement Issues

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- **Mount Pleasant House**, Seasalter Lane, Yorkletts, Whitstable
- **Mount Joy**, Coombe Walk, Yorkletts
- **Hawthorn Cottages**, May Street, Herne Bay
- **Wickhambreaux CE Primary School**, The Street, Wickhambreaux, Canterbury
- **Spires Academy**, Bredlands Lane, Sturry, Canterbury
- **Wentworth Primary School**, Wentworth Drive, Dartford
- **Maypole Community Primary School**, Franklin Road, Dartford.
- **Land adjoining Long Hill playing field**, Romans Road, Dover
- **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
- **Hermitage Quarry**, Hermitage Lane, Maidstone
- **Kings Hill Primary School**, Crispin Way, Kings Hill, West Malling

8. The above represents the current workload of the Planning Enforcement Team but is not exhaustive in terms of advice given to other regulatory authorities and cases investigated, which are ultimately not for this Authority.

Meeting Enforcement Objectives

Background

9. It is understandable that the public, their representatives and other interested parties will look for comprehensive and decisive action against alleged planning contraveners. Any County Matter action, however, must be robust and *intra vires* i.e. within the powers and control of the County Council. A balance therefore has to be struck between meeting an urgent expectation for action and to ensure that any action taken is expedient, robust and can be successfully sustained through the courts. We often need to access specialist barrister advice on the best way to navigate the increasing complexity of cases and related issues of planning jurisdiction.

Operational matters

10. Operationally, cases need to be thoroughly researched in order to elicit 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. A new initiative by KCC Planning Enforcement is in finding ways to bring all interested public regulators on suspected contravening sites at the same time. This offers more focussed and potentially a more cost-effective range of actions to follow. The very presence of a group of enforcement officers tends to have a salutary effect on the alleged contraveners.

The proliferation of waste crime

11. Waste crime continues to be a prominent feature of our workload and the Environment Agency's. The Government is alert to this trend and is bringing forward new powers such as Her Majesty's Revenue and Customs (HMRC) now being able to pursue individuals, companies and their supporting networks for the alleged evasion of Landfill Tax. This may prove to be an important complementary type of action to the County Council's Planning Enforcement powers and those of the Environment Agency.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

12. 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

13. Alongside the above monitoring regime there is a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to reoccur. This accounts for a significant and long-established pattern of high frequency site monitoring. Cases are routinely reviewed to check for compliance and where necessary are reported back to the Committee. In this instance, there are no cases to report back.

Conclusion

Update on Planning Enforcement Issues

Item 5

14. The County Planning Enforcement workload continues to be challenging and resource intensive. Alongside this we are offering specialist advice on case strategies and management to allied regulators, especially district authorities. Collaborative working is very important in a context where all enforcement authorities are pressed for resources, in the face of increasingly organised contraveners. We therefore continue to engage in case conferences and multi-agency site inspections on complex cases, which may strictly fall outside our remit, to seek to ensure that local authority resources in the widest sense, are effectively used.

Recommendation

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

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