

REGULATION COMMITTEE

Wednesday, 25th September, 2019

10.00 am

Sessions House





AGENDA

REGULATION COMMITTEE

**Wednesday, 25th September, 2019, at
10.00 am
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, Mr D L Brazier, Ms S Hamilton, 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 - 14)
 - (a) Committee: 22 May 2019
 - (b) Member Panel: 18 June 2019
4. Update from the Public Rights of Way and Access Service (Pages 15 - 18)
5. Update on Planning Enforcement Issues (Pages 19 - 22)
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 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.

EXEMPT ITEMS

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

8. Update on Planning Enforcement cases (Pages 23 - 56)

Benjamin Watts
General Counsel
03000 416814

Tuesday, 17 September 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, 22 May 2019.

PRESENT: Mr A H T Bowles (Chairman) Mr M A C Balfour, Mr D L Brazier, Mr I S Chittenden, Mr P M Harman, 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

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

UNRESTRICTED ITEMS

5. Membership

(Item 1)

RESOLVED that the appointment of Mr D L Brazier in place of Mr P J Homewood be noted.

6. Minutes

(Item 4)

RESOLVED that the Minutes of the Committee meeting of 24 January 2019 and the Member Panel of 27 February 2019 are correctly recorded and that they be signed by the Chairman. The Minutes of the Mental Health Guardianship Sub-Committee are noted.

7. Update on Planning Enforcement Issues

(Item 5)

The Head of Planning Applications Group gave an update on planning enforcement and monitoring work carried out since the Committee meeting on 24 January 2019. The Team had continued to prioritise resources on those sites which had the greatest potential for environmental harm. She drew Members' attention to the Government document 'Our Waste, Our Resources' which was a strategy for managing waste in England.

The Chairman proposed, Mr Marsh seconded, and the Committee agreed unanimously, that some training should be undertaken on the Waste Strategy. This would start at 10am on the day of a future Regulation Committee with the Committee meeting to follow. There would be an open invitation to all Members of the Council to attend.

The Head of Planning Applications Group explained that the complexity of enforcement cases continued to grow and, as evidenced in other parts of the country,

continued to move towards more organised crime links with an emphasis on mixed uses.

The Chairman suggested that a representative of the Environment Agency be invited to future meetings, the Committee agreed.

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

EXEMPT ITEMS **(Open Access to Minutes)**

(Members resolved under Section 100A of the Local Government Act 1972 that the public be excluded 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 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 and Ripley's Auto Spares Ltd, Bilsington, Ashford; Mount Pleasant Farm, Yorkletts, Whitstable; Mount Joy, Yorkletts, Whitstable; Hawthorn Cottages, May Street, Herne Bay; Spires Academy, Sturry, Canterbury; Wentworth Primary School, Dartford; Maypole Community Primary School, Dartford; Borough Green Sand Pits, Borough Green; Stonepit Restoration Ltd, Dartford; Land Adjoining Long Hill Playing Field, Dover; Fleetmix Ltd, Northfleet; Mayfield Grammar School, Gravesham; Land at Stockbury Valley, Stockbury; Water Lane/Moat Road, Headcorn, Maidstone; Little Neverend Farm, Pye Corner, Ulcombe; Environment First Ltd, Chart Sutton, Maidstone; St Francis Catholic Primary School, Maidstone; Thirwell Farm, Drove Lane, Hernhill; East Kent Recycling Site D, Oare Creek, Faversham; Three Lakes Caravan Park, Murston and Wrotham Quarry, Addington, West Malling.

(2) The Chairman reported that the local Member, Mr M Dance, was informed of the Mount Pleasant Farm, Yorkletts site.

(3) Members briefly discussed responsibility for road lining with respect to single and double yellow lines.

(4) The Committee amended the Stockbury Valley site recommendation in order to retain it on the *Schedule of Contraventions on unauthorised or permitted sites*.

(5) Members requested that a representative, responsible for school developments be invited to a future meeting.

RESOLVED that subject to (4) above, the enforcement strategies outlined in paragraphs 4 to 16 and the Schedule/Appendix of the report be noted and endorsed.

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Bobbing Village Hall, Sheppey Way, Bobbing, Sittingbourne ME9 8PL on Tuesday, 18 June 2019.

PRESENT: Mr A H T Bowles (Chairman), Mr S C Manion (Vice-Chairman), Mr M A C Balfour, Mr I S Chittenden and Mr J M Ozog

IN ATTENDANCE: Ms M McNeir (Public Rights Of Way and Commons Registration Officer), Ms K Beswick (Searches Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

3. Application to register land at Cryalls Lane at Sittingbourne as a new Town or Village Green
(Item 3)

(1) The Panel Members visited the site before the meeting. The visit was attended by Mr Mike Baldock applicant, Mr Clive Sims (Borden PC) and Mr M J Whiting (Local Member).

(2) The Commons Registration Officer introduced the report by saying that the application to register the land had been made on 30 October 2015 by Mr Mike Baldock under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014. A report on the application had been considered by a Regulation Committee Member Panel on 23 October 2017 where the decision had been taken to refer the matter to a Public Inquiry to clarify the issues.

(3) The Commons Registration Officer said that the Public Inquiry had been held in June 2018. The applicant had agreed at this point to amend the application by excluding the area in the north-eastern part of the site which was owned by SEPN as well as a further strip of land owned by Ward Homes Ltd that was subject to rights to lay cables. The Inspector had produced her findings on 27 November 2018.

(4) The Commons Registration Officer moved on to consider the Inspector's findings on the legal tests. The first of these was whether use of the land had been as of right. It was clear that use had taken place neither secretly nor by the use of force. There had, however, been a question as to whether it had been with permission. The objectors had stated that notices had been erected by Ward Homes in 2003 and 2006 explaining that the land was owned or managed by Ward Homes and that use of the land was with the consent of the owner. The Inspector had concluded that as no member of the public had seen

the notices and as the applicants had been unable to provide photographs and could not recollect the wording on them, use had been of right.

(5) The second test was whether use of the land had been for the purposes of lawful sports and pastimes. It had become apparent during the Inquiry that the predominant use of the land had been for walking, leading to the question of whether this was walking in a general fashion or walking a defined linear route. The latter was generally regarded as a “rights of way type use” which case law (*Laing Holmes*) had established needed to be discounted for the purposes of Village Green registration. The Inspector had concluded that as the land had become ever more overgrown during the period on question, nearly all of the walking would have been along the main paths. This, taken together with the insufficiency of the evidence given to have persuaded the landowners that the site was in regular use by the local community for lawful sports and pastimes throughout the relevant period had led her to conclude that the test had not been met.

(6) The third test was whether use had been by a significant number of inhabitants of a particular locality or neighbourhood within a locality. The Inspector had concluded that the New Zealand Estate within the ecclesiastical parish of Borden qualified as a description of a neighbourhood within a locality. The Inspector had, however, concluded that qualifying use had not been by a significant number of inhabitants because most of the use had been “rights of way type use” which could not be considered to be “as of right” use for Village Green purposes. The remainder had been insufficient to indicate to the landowner that a Village Green right was being asserted. The test had therefore not been met.

(7) The Commons Registration briefly set out that the Inspector had concluded that the two remaining tests (whether use of the land had continued up to the date of application and whether use had continued for a period of twenty years or more) had both been met in themselves. The Inspector had, however also noted that she did not consider that use had taken place with the requisite sufficiency, particularly during the latter part of the material period.

(8) The Commons Registration Officer then said that the Inspector had also considered representation made by SEPN that registration should not take place due to statutory incompatibility. This argument had been based on the *Newhaven* case where the Supreme Court had ruled that even though the claim had satisfied the legal tests, the land was not capable of registration as a village green as it formed part of the operational land of the port of Newhaven. The Inspector had concluded in respect of the Cryalls Lane site that SEPN’s duties would not be as clearly impeded by registration as had been the case at Newhaven. Furthermore, SEPN did not hold the land for statutory purposes. It merely had the benefits of certain rights which could be terminated at any time by the landowner.

(9) The Inspector’s overall conclusion was that the application should fail because the applicant had failed to demonstrate that there had been qualifying use by a significant number of local inhabitants throughout the relevant period and that a Town or Village Green was being asserted.

(10) The Commons Registration Officer then said that she had asked all parties to comment on the Inspector's report. The applicant had argued in response that the main objector had deposited a statement with KCC in 2008 under section 31 (6) of the Highways Act 1980 confirming that no additional rights of way could be dedicated for public use. The applicant claimed that, as a result, any subsequent use of the paths across the site could not be relied on to acquire public rights of way and that such use therefore had to be considered as qualifying use for the purposes of village green registration.

(11) The Inspector had written a response to this representation stating that the fact that footpath use was highly unlikely to result in the acquisition of PROW rights did not mean that it could be considered as village green use. She had therefore confirmed her original conclusions.

(12) The Commons Registration Officer concluded her presentation by saying that she had carefully considered the Inspector's report and that she was in agreement with its conclusions. She therefore recommended that the application should be rejected.

(13) Mr Clive Sims (Borden PC) said that the east-west paths were in constant agricultural use and could not possibly qualify as a public right of way. The circular path was widely used and site-specific. He believed that this should be sufficient to enable registration. He noted that there was no clear definition of the word "significant." The word was used in s31 of the Children and Young Persons' Act 2008, proving that a minimal amount could also be significant. Mr Sims also stated that Borden PC would be happy to pay for the maintenance and upkeep of the site if it was registered as a Village Green.

(14) Mr Mike Baldock (applicant) referred to the *R v. Oxfordshire County Council, ex parte Sunningwell* case. He said that the judgement confirmed that the status of the land was independent in that registration simply confirmed that it was a village green.

(15) Mr Baldock then turned to Section 31 of the Highways Act 1980. He said that the general assumption was that if the landowner lodged a statement together with a map of the land, no further rights of way could be created. Section 31 (6) stated that the act of doing so did not prevent the landowner himself from dedicating any other way as a highway. In this instance, the landowner had provided a map and statement without lodging any land at all as a public right of way.

(16) Mr Baldock continued by saying that he believed that the Inspector had misunderstood the full implications of the user qualifications for Rights of Way and Village Greens. He said that there could be no doubt that use had taken place over a 20-year period. In the event that the evidence was ambiguous, the Courts had established that the tests for Village Greens were less onerous than those for Public Rights of Way. As no rights of way existed on the site, and as the landowner had stated his intention that no rights of way could be claimed on the site, it could only be that any potentially qualifying use had to be for a Village Green – where the tests were less onerous. Furthermore, use of the track, dog

walking or the pushing of prams could all be activities which could be treated as recreational use.

(17) Mr Baldock went on to say that the critical matter in determining whether use had been by a significant number of people was how the landowner would perceive such use. Justice Lightman had ruled that if the land was in general use, this would qualify as “significant” in this regard. Use of the tracks and paths had certainly been general, and the landowner would have known that members of the public could not be seeking to establish a public Right of Way. Therefore, they could only be seeking to establish Village Green rights and the use was sufficient to draw to the landowner’s attention that they were doing so.

(18) Mr Baldock then said that he did not agree with the Inspector’s view that the site had not been used for the entire 20-year period. This was because aerial photographs taken during this period showed that the network of usable paths was ever-changing. By 2015 for example, the circular path was being used less frequently than other paths, whilst the second east/west path had been created later during the period.

(19) Mr Baldock concluded his remarks by saying that the site was set aside as Local Green Space in the Swale Borough Local Plan. In other words, it was identified as appropriate for recreation. The site had been used extensively for lawful sports and pastimes throughout the period and the implication of the various aerial photographs was that this use must have been constant. The whole site had been used for a variety of purposes and should consequently be registered.

(20) The Commons Registration Officer replied to some of the points made by Mr Baldock by saying that the people using the path were exiting the site onto agricultural land. In doing so, they were using it in a Public Rights of Way manner. There was no legal definition of the word “significant” in the context of section 15 of the Commons Act 2006, although case law had provided some guidance. The fact that the landowner did not intend any part of his land to be designated as a Public Right of Way did not mean that any such use automatically became a Village Green recreational activity. Village Green legislation did not contain a rebuttal presumption, so the landowner would simply not have been able to take the same action in this respect as he had done under Section 31 (6) of the Highways Act.

(21) On being put to the vote, the recommendations contained in the report were carried by 4 to 1.

(22) RESOLVED that for the reasons set out in the Inspector’s report dated 27 November 2018, the applicant be informed that the application to register land at Cryalls Lane in Sittingbourne has not been accepted.

4. Application to register land at Grove Park Avenue in the parish of Borden as a new Town or Village Green
(Item 4)

(1) Members of the Panel visited the application site prior to the meeting. The visit was attended by Mr Mike Baldock (applicant), Mr M J Whiting (Local Member), Mr Clive Sims (Borden PC) and Mr Hamish Buttle (Quinn Estates).

(2) The Commons Registration Officer briefly confirmed that the application had been made by Mr Mike Baldock under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014.

(3) The Commons Registration Officer explained that the majority of the application site was owned by Taylor Wimpey UK Ltd and that a rectangle of land in the north western corner was registered to the Highways England Company.

(4) Following consultation, objections had been received from Swale BC and Mulberry Estates Sittingbourne. The Borough Council had argued that a Village Green would have a negative impact on development needs and supporting infrastructure. Mulberry Estates Ltd Sittingbourne had objected on the grounds that the site had been identified as highway land and was therefore not capable of registration.

(5) The application had been considered at a meeting of the Regulation Committee Member Panel on 23 October 2017 where the decision had been taken to refer it to a Public Inquiry for further consideration. This Inquiry had taken place in April 2018.

(6) The Commons Registration Officer then set out the Inspector's findings which set out her findings and conclusions in a report dated 8 July 2018. The Inspector had considered the legal tests, the first of which was whether use of the land had been "as of right." She had found that use had not taken place secretly or forcibly.

(7) The Inspector had then considered the question of whether the application site was highway land. She had noted that deed dated 28 January 1969 in which KCC had agreed to take over the road now known as Grove Park Avenue and all the verges as a highway maintainable at the public expense. Although there was no proof that this adoption had taken place, there was sufficient circumstantial evidence that the entire site including the narrow rectangle of land should be considered as highway land.

(8) The Commons Registration Officer then said that the Inspector had approached the "as of right" question by taking into account that the two Acts had never expressly precluded highway land from being registrable as a Village Green. Case Law had, however, established that qualifying use could not occur when the landowner had given permission. She had then studied the implications of the *DPP v Jones 1999* case and concluded that as the whole of the land was highway land, the use which took place was carried out lawfully by virtue of the public's right to use the land as highway land, and was consequently not "as of right" but "by right."

(9) The second test was whether use of the land had been for the purposes of lawful sports and pastimes. The Inspector had seen evidence that the site was used for a range of recreational activities including ball games, hide and seek,

barbecues, frisbee, picnics and golf practice. She had nevertheless concluded that the test had not been met because all of these lawful sports and pastimes were lawful uses of the highway verge and had therefore been undertaken by virtue of a pre-existing right.

(10) The Commons Registration Officer then turned to the question of whether use had been by a significant number of inhabitants of a particular locality or a neighbourhood within a locality. The Inspector had agreed with the applicant that Grove Park Avenue constituted a neighbourhood because although, as the objector had pointed out, this was a small road, she had found it to be a cohesive area which was bounded and where the houses had been built at the same time. She had also agreed that the evidence before her would have been sufficient (if the “as of right” test had been met) to be considered a significant number as the land was in general use by the community.

(11) The Inspector had also concluded that use of the land had continued up to the date of application and that it taken place for the entire 20-year qualifying period between May 1996 and May 2016.

(12) The Commons Registration Officer said that the Inspector’s overall conclusion had been that the application should fail because the evidence indicated that the land was highways land. Consequently, all lawful recreational use had taken place lawfully by virtue of the public’s right to use it and could not therefore lead to the acquisition of a prescriptive right.

(13) The Commons Registration Officer said that she had forwarded a copy of the Inspector’s report to the applicant and objector. The applicant had disputed the Inspector’s findings in respect of the small rectangle of land owned by Highways England, arguing that it was a matter of opinion whether it was Highways land or not. The Inspector’s response to this was that she had reached her decision on the balance of probabilities on the basis of the evidence presented to her.

(14) The Commons Registration Officer then said that the applicant had also disputed the Inspector’s interpretation of the House of Lords’ decision in *DPP vs Jones*. He had argued that although it was widely believed that the decision was that the public had a wide-ranging right of access on highway land, the decision had not been unanimous. Two judges had dissented had formed the view that the public’s rights to use the highway were limited to passage, re-passage and anything else related to that right. For this reason, the judgement should be understood as meaning that activities that took place on the highway were not undertaken “by right” but rather on the basis that they would not be unreasonable in certain circumstances. Thus, the decision did not create any right to use the highway for recreational purposes. Most of the use of the site was therefore of a nature that was tolerated rather than in exercise of a legal right.

(15) The Commons Registration Officer moved on to set out the Inspector’s rebuttal of the applicant’s representations. She had based her decision on the *ratio decidendi* (i.e. the passage which set the legal precedent.) She had agreed that the test to be applied depended on the individual circumstances of each case and that there had been no binding court judgement dealing with the recreational

use of highway land in the context of village green legislation. Her task had been to make a recommendation based on the view that the courts were most likely to take. She had therefore remained of the view that the application should be refused.

(16) The Commons Registration Officer concluded her presentation by saying that she agreed with the Inspector that the application site was highway land. She also agreed with her that the majority judgement in *the DPP vs Jones* case had the effect of making any lawful use of highway land for recreational purposes part of an existing right and that its use had consequently not been “as of right.” She therefore recommended accordingly.

(17) Mr Clive Sims (Borden PC) said that everything in this particular case depended on legal terminology and interpretation. In respect of the Inspector’s conclusions in relation to the nature of the land, he said that he had asked Swale BC which legislation they used for the purposes of parking enforcement on the land. They had informed him that they used a by-law. He asked why Swale BC would need to resort to such measures if the site was highway land.

(18) Mr Mike Baldock (applicant) began his presentation by referring to the *Eyre vs New Forest Highway Board 1892* case where the judgement had been that all highways had their actual or presumed origin in a dedication (either by design or by inference). The Inspector had not addressed this in her report. As there was no record of the land in question being dedicated in such a way, he believed that it could not be categorized as “highway land” unless those claiming it to be highways land could actually verify it; nor did the land appear on the list of streets. The fact was that neither KCC nor Swale BC had been able to provide any documentation (although several documents ought to exist). This included the period when it was claimed that KCC and passed responsibility to Swale BC. The fact that Swale BC was maintaining the land did not imply that it had rights to it.

(19) Mr Baldock then addressed the question of whether the land should be registered even if it were to transpire that it was highway land after all. He said that the comments that he had made in respect of differing verdicts to that reached by Lord Irwin related to two judges who were in fact part of the majority verdict rather than dissenting judges as the Inspector had believed. The majority had simply ruled that a peaceful assembly on a highway which did not unreasonably interfere with or obstruct it, was not a trespassory assembly. Lord Irvine’s judgement had applied this to all lawful activities whereas Lord Hutton had limited it to the right of assembly and Lord Clyde had stated that it needed to be a case-by-case decision. The two dissenting judges had been Lord Slynn and Lord Hope. The *DPP vs Jones* decision did therefore not have the effect of creating the right to use highways for any lawful purpose, so even if this was highway land, lawful sports and pastimes carried out on it could not be automatically disqualified as not being “as of right.”

(19) The Commons Registration Officer commented on the representations made by saying that a local authority needed to pass a by-law if it wished to make parking illegal. It was permissible to park on highway land unless such an

enactment was made. She added that the list of streets was a maintenance record that was far vaguer than the Village Green Register.

(20) The Commons Registration Officer then said that the 1969 Deed specified that the road and all verges was to be forever open to the public. This meant that there had been a clear intention to dedicate the land to public use.

(21) In respect of Mr Baldock's comments on *DPP vs Jones*, the Commons Registration Officer said that the terms of the judgement had been framed in such a way as to clarify the relationship between the House of Lords judgement in that case and the *Attorney General vs Antrobus 1905* judgement.

(22) On being put to the vote, the recommendations contained in the report were carried unanimously.

(23) RESOLVED that for the reasons set out in the Inspector's report dated 8 July 2018, the applicant be informed that the application to register land at Grove Park Avenue in the parish of Borden has not been accepted.

5. Application to voluntarily register land at Spires Ash at Headcorn as a new Town or Village Green
(Item 5)

(1) The Commons Registration Officer introduced the report by saying that Headcorn Parish Council had applied to register land known as Spires Ash in Headcorn as a Village Green. This application had been made under s 15 of the Commons Act 2006 which permitted landowners to apply to voluntarily register their land.

(2) The Commons Registration Officer briefly explained that the both tests for voluntary registration had been met in that the land in question was wholly owned by the applicant and was in the locality of the civil parish of Headcorn.

(3) On being put to the vote, the recommendations contained within the report were carried unanimously.

(4) RESOLVED to inform the applicant that the application to register land known as Spires Ash at Headcorn has been accepted and that the land subject to the application (as amended and shown at Appendix A to the report) be formally registered as a Town or Village Green.

Update from the Public Rights of Way & Access Service

A report by the Definitive Map Team Leader to Kent County Council's Regulation Committee on Wednesday 25th September 2019.

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 2018 to March 2019, 6 applications were determined, of which 3 were declined, 1 Order was made and confirmed and 2 Orders were made, and objections were received. There are currently 47 unallocated applications and a current backlog of approximately 4 years. The number of applications received fluctuates with 7 applications being received in 2018 and already 18 have been received in the current year.

2.2 There are 5 cases with the Planning Inspectorate awaiting determination, 2 of these are where the County Council declined to make an Order and the applicant has appealed that decision. The other 3 cases are where objections were received to the making of an Order.

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 2018 to March 2019, 24 Public Path Orders have been confirmed (including 1 to facilitate the safer crossing of a railway). 38 applications are currently being processed. There are 56 unallocated diversions/extinguishments resulting in a backlog of approximately 3 years between the receipt of an application and allocation to an officer.

3.2. There are 3 cases with the Planning Inspectorate awaiting determination: -

- Extinguishment and creation of a new length of DR46 and the diversion of DR47/SD47 at Darenth and Horton Kirby & South Darenth.
- Extinguishment of Public Footpath KM250
- Diversion of Public Footpath SR22 at Shoreham

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.

3.4 Within Schedule 14 of the Wildlife and Countryside Act 1981 there is provision for an applicant to apply to the Secretary of State if their application has not been dealt with within 12 months of receipt. The County Council has received Notice that an applicant has applied to the Secretary of State. The Secretary of State will in due course consider this request and can direct the County Council to determine the application within a given time. It is predicted that more applicants may consider this course of action as the backlog continues to increase.

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, Dover, Gravesham, Folkestone and Hythe, Sevenoaks, Swale, Tonbridge & Malling & Tunbridge Wells Councils and the Ebbsfleet Development Corporation. Since the last update Dover have signed a Service Level Agreement leaving just Maidstone and Thanet that still process their own applications. A small number of applications are also processed in respect of our own planning functions. The County Council is currently processing 38 such applications. In 21 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 2018 to March 2019, 24 Deposits have been received, a decrease of 5 from the previous year.

Legislative Update

5. Deregulation Act 2015 – The Deregulation Act came into force on 27th March 2015, however the elements in relation to PROW have still not come into force as we are awaiting the associated regulations and guidance. The latest information from DEFRA was that the regulations should have been introduced this summer, but this was subject to parliamentary time. No further updates have been received and there is therefore no indication as to when the Regulations will be published.

5.1 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 It is interesting to note that of the 47 unallocated section 53 applications, 21 are based upon pre-1949 historical evidence with the remaining ones being based predominately on user evidence. The backlogs referred to above are currently worked out from when the next application to be allocated was submitted. This approach has worked well to date. However, as the number of applications received each year is set to increase, it will be necessary to review the Priority Statement and consider whether greater priority should be given to section 53 applications which are predominately based upon user evidence.

5.3 The PROW & Access Team is in the process of recruiting an additional Definitive Map Officer which it is hoped will help tackle the backlogs.

Applications to register Village Greens under section 15 of the Commons Act 2006

6. So far this year, five applications to register land as a Village Green have been determined (of which three were rejected, one was registered as a Village Green and one is to be referred to the Planning Inspectorate). A further eight applications remain outstanding, of which three will be referred to the Regulation Committee Member Panel for determination imminently.

6.1 A Public Inquiry was held earlier this year into the application to register Hospital Field at Brabourne as a Village Green; the Inspector's report is currently with the parties for comment and the matter will be put before the Member Panel for

decision later in the year. The County Council is still awaiting the Inspector's report in respect of the Village Green applications at Whitstable Beach and The Downs (Herne Bay), both of which have been legally complex and affected by changes in case law.

Recommendation

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

Contact Officer:

Laura Wilkins – Definitive Map Team Leader

Public Rights of Way & Access Service

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Update on Planning Enforcement Issues

Item 5

Report by Head of Planning Applications Group to the Regulation Committee on 25th September 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 22nd May 2019 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. There is a further exempt report within (Item 8) in these papers with an attached schedule, containing restricted details of cases. However, a list of the cases covered in the schedule is given under paragraph 7 below.

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, legal technicalities 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:

01. **Ashford Waste Water Treatment Works**, Canterbury Road, Bybrook, Ashford.

02. **Mount Pleasant Farm**, Seasalter Lane, Yorkletts, Whitstable.

03. **Mount Joy**, Coombe Walk, Yorkletts.
04. **Hawthorn Cottages**, May Street, Herne Bay.
05. **Spires Academy**, Bredlands Lane, Sturry, Canterbury.
06. **Wentworth Primary School**, Wentworth Drive, Dartford .
07. **Maypole Community Primary School**, Franklin Road, Dartford.
08. **Borough Green Sandpits**, Platt Industrial Estate, St Marys Platt.
09. **Stonepit Restoration Ltd**, Stone Pit 2, St James Lane, Greenhithe, Dartford.
10. **NT Rix Scaffolding Yard**, Longhill Astley Avenue, Dover.
11. **Land adjoining Long Hill playing field**, Romans Road, Dover.
12. **Fairfield Court Farm**, Brack Lane, Brookland, Romney Marsh.
13. **Fleetmix Ltd**, Aggregate Stockpile, Northfleet, Kent.
14. **Mayfield Grammar School**, Pelham Road, Gravesend.
15. **Land at Stockbury Valley** (Longton Wood), Detling Maidstone.
16. **Water Lane / Moat Road**, Headcorn, Maidstone.
17. **Little Neverend Farm**, Pye Corner, Ulcombe.
18. **Environment First Ltd**, Lested Farm, Chart Sutton, Maidstone
19. **St Francis Catholic Primary School**, Queens Road, Maidstone
20. **Thirwell Farm**, Drove Lane, Hernhill
21. **East Kent Recycling Site D**, Oare Creek, Faversham Kent
22. **Three Lakes Caravan Park**, Murston, Sittingbourne
23. **Wrotham Quarry**, Addington, West Malling
24. **Rear of Orchard at Crouch Lane**, Sandhurst, Tunbridge Wells

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. A theme for this Meeting is the resource that the County Planning Enforcement Team has to dedicate towards handling an increasing number of case referrals from district councils. These are passed on as 'County Waste Matters'. However, after reviewing the case details, including the planning histories, we have found, in practically all instances that they are not for the County, as indicated by the district councils and that we do not have planning jurisdiction.
10. Some cases are escalated and in others' complainants are simply directed to this Authority. In order to establish correct jurisdiction, it is necessary to direct considerable resources investigating alleged breaches and site histories. In some cases, this will need the drafting of detailed briefs for Counsel's advice and guidance. In addition to this activity, we are still attending sites involving the most pressing cases. To free up more time, we are also offering specialist planning enforcement and bulk material handling advice to district councils, to help them to maximise the use of their own powers, before referring cases onto us. This is important as the County Council does not have a planning remit in mixed use cases, which are often at the heart of the matter.

Operational matters

11. To ensure the efficient use of resources and capacity to investigate County Matter cases, a rebalancing of priorities is needed in order to meet the strategic challenges set.
The referred district council cases may be progressed more effectively in any event through operational advice and support from the County Planning Enforcement team.

Going forward

12. Those parties involved in planning breaches relating to waste crime are becoming more adept at finding ways to circumvent the planning system. As a result, it is important for there to be a close working relationship between ourselves, the district councils and the Environment Agency, if the planning enforcement team are to effectively tackle the larger more challenging sites. This includes prioritising resources for cases where the County Council has a remit. This also involves making a judgement where work could more appropriately be handled, within the wider range of powers of the other regulators. That does not preclude the County Council from becoming involved. It recognises instead our primary strategic role and the holistic endeavour needed from all parties.

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 against the statutory monitoring charging scheme. This

provides 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. With limited resources, and an increase in cases and referrals, these resources need to be focussed on those cases where the County Council has jurisdiction and a remit to act. Alternative solutions to settling cases needs to be found with the other regulators, rather than resorting to resource intensive legal routes. The enforcement team will continue to seek solutions where cases can be shared operationally without single authorities having to hold exclusive jurisdiction. That traditional approach may apply in the case of smaller sites but medium to larger sites with multiple uses will require a more collegiate and holistic approach.

Recommendation

16. I RECOMMEND that MEMBERS NOTE & ENDORSE:

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

Case Officers: KCC Planning Enforcement

03000 413380 / 413384

Background Documents: see heading.

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

Agenda Item 8

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of the Local Government Act 1972.

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