

REGULATION COMMITTEE

Tuesday, 28th January, 2020

11.00 am

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

**There will be a training session for Members of the
Committee at 10.00 am on Home to School Transport**





AGENDA

REGULATION COMMITTEE

Tuesday, 28th January, 2020, at 11.00 am Ask for: **Andrew Tait**
Council Chamber, Sessions House, County Telephone: **03000 416749**
Hall, Maidstone

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 and
Mr A M Ridgers and 1 Vacancy

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 1 - 14)
 - (a) Committee: 25 September 2019
 - (b) Member Panel: 3 December 2019
4. Dates of future meetings
 - Wednesday, 20 May 2020
 - Thursday, 24 September 2020
 - Thursday, 28 January 2021
 - Wednesday, 23 June 2021
5. Home to School Transport Appeals Update (Pages 15 - 18)
6. Oral Update from the PROW Team

7. Update on Planning Enforcement Issues (Pages 19 - 24)
8. Other Items which the Chairman decides are Urgent
9. Motion to exclude the public

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

EXEMPT ITEMS

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

10. Update on Planning Enforcement cases (Pages 25 - 58)

Benjamin Watts
General Counsel
03000 416814

Monday, 20 January 2020

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.

KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Wednesday, 25 September 2019.

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

ALSO PRESENT: Mr H Rayner

IN ATTENDANCE: Mr G Rusling (Public Rights of Way & Access Service Manager), Mrs L Wilkins (Definitive Map Team Leader), Mrs S Thompson (Head of Planning Applications Group), Mr R Gregory (Team Leader - Planning Enforcement) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

9. Minutes

(Item 3)

- (1) The Committee agreed that the training on the Waste Strategy (Minute 7) would be held at 9.30 am on Tuesday, 22 January 2019 prior to that day's Committee meeting, which would commence at 10.30 am.
- (2) RESOLVED that the Minutes of the Committee meeting held on 22 May 2019 and of the Member Panel meeting held on 18 June 2019 are correctly recorded and that they be signed by the Chairman.

10. Update from the Public Rights of Way and Access Service

(Item 4)

- (1) The Definitive Map Team Leader summarised the current position in respect of Section 53 Applications; applications to divert or extinguish public rights of way; the diversion, extinguishment or creation of public rights of way; Statutory Deposits; legislative updates; and applications to register Village Greens.
- (2) During discussion of this item, Members noted and commented upon the possible necessity to review the Priority Statement if, as anticipated, the number of section 53 applications were to increase.
- (3) RESOLVED that the report be noted.

11. Update on Planning Enforcement Issues

(Item 5)

(1) The Head of Planning Applications Group gave an update on planning enforcement and monitoring work carried out since the previous meeting of the Committee. She drew attention to the increasing number of referrals from district councils and the pressure on already stretched staff resources of having to establish, in practically all instances, that KCC did not have planning jurisdiction.

(2) During discussion of this item, Members recognised the strain on enforcement resources experienced by all of the relevant authorities and agreed with the Chairman's suggestion that the Leaders' Forum might be the appropriate place for consideration to be given to the alleviation of this problem through improved joint working arrangements.

(3) 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.)

12. Update on Planning Enforcement cases

(Item 8)

(1) Mr H Rayner was present for this item pursuant to Committee Procedure Rule 2.27 and spoke.

(2) The Head of Planning Applications Group gave an update on unauthorised planning enforcement matters setting out actions taken or contemplated at Ashford Waste Water Treatment Works, Bybrook, 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; Stonepit Restoration Ltd, Dartford; NT Rix Scaffolding Yard, Dover; Land Adjoining Long Hill Playing Field, Dover; Gairfield Soils Ltd, Brookland, Romney Marsh; 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; Wrotham Quarry, Addington, West Malling; Borough Green Sandpits, Platt Industrial Estate, St Mary's Platt; and Land lying to the rear of Rye Road, Crouch Lane, Sandhurst.

(3) The Head of Planning Applications Group informed the Committee of correspondence from Mrs S V Hohler and Dr L Sullivan in respect of sites in their constituencies.

(4) The Committee noted that Spires Academy would be removed from the Contraventions Schedule once the works had been signed off by KCC Highways and Transportation.

(5) The Committee agreed to retain Longton Woods, Stockbury on the Contraventions Schedule.

(6) RESOLVED that subject to (4) and (5) above, the endorsement strategies outlined in paragraphs 4 to 18 and in the Appendix of the report be noted and 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 Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 3 December 2019.

PRESENT: Mr A H T Bowles (Chairman), Mr S C Manion (Vice-Chairman), Mr P M Harman and Mr R A Pascoe

ALSO PRESENT: Mrs C Bell, Mr G K Gibbens and Mrs T Dean, MBE

IN ATTENDANCE: Ms M McNeir (Public Rights Of Way and Commons Registration Officer), Mr C Wade (Principal Legal Orders Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

6. Application to register land known as Hospital Field at Brabourne as a new Town or Village Green

(Item 3)

(1) The Panel Members visited the site before the meeting. This visit was attended by Mr Alan Day (Gladman Developments Ltd) and some 8 members of the public.

(2) The Public Rights of Way and Commons Registration Officer introduced the application which had been made by Brabourne PC under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014. Section 15 of the Commons Act enabled any person to apply to the Commons Registration Authority to register land as a Village Green where it could be shown that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.

(3) The Public Rights of Way and Commons Registration Officer continued by saying that an objection had been received from Gladman Developments Ltd on the grounds that the neighbourhood relied upon was not a qualifying one; that the use relied upon was predominantly referable to the Public Footpaths on the application site and insufficient to indicate that the land was in general use by the community; that the land was not available for recreational use for long periods due to the presence of crops; and that any wider recreational use was either challenged or with permission.

(4) The application had been considered on 18 March 2018 by a Regulation Committee Member Panel which had referred it to a Public Inquiry for further consideration.

(5) The Public Rights of Way and Commons Registration Officer said that the Public Inquiry had taken place in February 2019. She went on to summarise the Inspector's findings and conclusions which had been produced on 22 July 2019.

(6) The Inspector had first considered whether use of the land had been "as of right." All parties had agreed that use had been without force. The objector had given evidence that some of the activities relied upon by the applicants had either been challenged (in the case of horse riding) or been with permission (metal detecting). The Inspector had, however, concluded that as these two activities had not constituted a major proportion of the evidence relied upon by the applicant, use of the site had been "as of right."

(7) the Inspector had then considered whether use of the site had been for the purposes of lawful sports and pastimes. Her findings had regard to the physical state of the site during the relevant 20-year period, when it had been in arable production for crops including wheat, barley and rapeseed. The tenant farmer's records only went back as far as 2005, but the Inspector was satisfied that the general pattern of agricultural use before then would have been similar. During those years when the field was left fallow (2006, 2010 and 2012), it would have been possible for the whole of the application site to be used for recreational purposes. During other years, however, the pattern of use would have been different. The Inspector found that people would have needed to stick to the public footpaths as the opportunity to carry out activities other than walking and dog walking would have been limited due to the crops. This would have been for particularly lengthy periods, especially when fast-growing, thick crops such as rape had been planted. The Inspector had found that it would have been very rare indeed during these periods (sometimes lasting for several months) for people to use the land off the public footpaths.

(8) The Inspector had concluded that, whilst being satisfied that the application site had indeed been used for lawful sports and pastimes, such use would have been dependent on the agricultural state of the land.

(9) The Public Rights of Way and Commons Registration Officer turned to the Inspector's findings on whether use had been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality. She had been satisfied that use had taken place by residents of the neighbourhood of Brabourne Lees within the localities of the civil parishes of Brabourne and Smeeth. She had also concluded that use of the land had been sufficiently significant for it to be apparent to the tenant farmer that it was taking place. This conclusion was, however, closely linked to the question of whether this significant recreational use could have taken place throughout the twenty-year period.

(10) The Public Rights and Commons Registration Officer informed the Panel that the Inspector had concluded that use of the site had continued up to and beyond the date of application.

(11) The final test was whether use had taken place over a period of twenty years or more. The qualification period for this test was 1 February 1996 to 1 February 2016. The Inspector's conclusion was that this test had not been met because use had been interrupted by the physical growing of crops and associated agricultural activities during those years when the land had not lain fallow. Any use during these

periods would have been sporadic and necessarily limited to the Public Footpaths and small portions of the site.

(12) The Public Rights and Commons Registration Officer informed the Panel that in the light of the findings she had described, the Inspector had concluded that the site was incapable of registration as a Village Green.

(13) The Inspector's report had been forwarded to both the applicant and objector. The objector had responded that the Inspector's report was both comprehensive and correct. The applicant had disagreed, claiming that recreational use had continued at a significant level in co-existence with agricultural use, even during the periods when crops were grown. They had also asked for further consideration to be given to the registration of the small portion of land at the southern end of the site known as the "bottom wedge."

(14) The Public Rights of Way and Commons Registration Officer briefly summarised her own conclusions which were set out in greater detail in the report. In respect of the applicant's request to consider registration of "the bottom wedge," she explained that the evidence (in the form of aerial photographs) had shown that crops had been planted in this part of the land between 2013 and 2016. She then said that she was in agreement with the Inspector's conclusions in every respect and that she consequently recommended that the land should not be registered.

(15) Mrs C Bell (Local Member) addressed the Panel. She said she was in agreement with the Parish Council's response to the Inspector's report because she believed that significant recreational use of the land had co-existed with agricultural use on a sufficiently large area of the site for registration to take place.

(16) On being put to the vote, the recommendations of the report were unanimously agreed.

(17) RESOLVED that for the reasons set out in the Inspector's report dated 22 July 2019, the applicant be informed that the application to register the land known as Hospital Field at Brabourne as a new Village Green has not been accepted.

7. Application to divert part of Public Footpath WC108 and create an additional Public Footpath at Cranbrook

(Item 4)

(1) The Panel Members visited the site before the meeting. This visit was attended by Mr Steve Kelsey (landowner), Mr Michael Wood (ET Landnet), Mr Brian Swann (Cranbrook and Sissinghurst PC), Mr John Donaldson and Mr Graham Smith (Ramblers) and some 8 members of the public. The Panel inspected the current route and the proposed new route.

(2) The Principal Legal Orders Officer introduced his report on the application to divert parts of Public Footpath WC108 which had been received from the owners of Great Swifts Manor at Cranbrook. The applicants had also offered to create an additional length of path around the edge of an adjoining field to benefit users of the existing PROW network.

(3) The Principal Legal Orders Officer then explained the reasons given by the applicants for the path to be moved. The current route ran down a busy driveway used daily by some 50 to 80 vehicles. It also ran across on land fronting the property where children and dogs played. Moving the route would overcome the resultant Health and Safety concerns. Dog excrement contaminated the machinery used to cut the grass and the resultant hay crop. Some members of the public also tended to attempt to force their way through the main gates, resulting in damage to the motor which was expensive to repair.

(4) The Principal Legal Orders Officer went on to set out the relevant Legal Tests.

(5) The Legal Tests for the diversion of a public path were contained within section 119 of the Highways Act 1980. These enabled the County Council to make an Order to divert a public path if it was satisfied that it was expedient to do so, either in the interests of the owner, lessee or occupier of the land crossed by the path in question, or if it was expedient in the interests of the public. It could not be diverted if the end of the path was not on another highway. The Order could not be confirmed by the Secretary of State when objections had been received unless the Council was satisfied that the route would not be substantially less convenient to the public as a result of the diversion, and that confirmation of the Order was expedient having regard to the effect of the diversion on public enjoyment of the route as a whole.

(6) Legislation relating to the creation of a Public Footpath by Order was contained within Section 26 of the 1980 Act which provided that the authority could create a public path over the land if it appeared to the Council that there was a need for a public path and if it was satisfied that it was expedient to do so after having regard to:

(a) the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and

(b) the effect which the creation of the path would have on the rights of persons interested in the land.

(7) The Principal Legal Orders Officer also set out the County Council's own criteria for promoting a Public Path Change Order. These were:-

“ (a) The status of the route must not be in dispute at the time of the application, unless the Public Path Order is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981;

(b) The applicant must agree to meet the County Council's costs of promoting the Order and bringing the new path into a fit condition for public use (as set out within section 3 of the Policy);

(c) The applicant must also agree to defray any compensation which may become payable as a result of the proposal;

(d) The definitive line should, where it is considered by the County Council to be reasonably practicable be open, clear and safe to use.

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

(8) The Principal Legal Orders Officer turned to the responses to consultation. He said that Tunbridge Wells BC had written that it did not support diversions of PROWs especially in the High Weald as this was contrary to its Landscape and AONB Management Plan unless there were compelling safety or security reasons or if a satisfactory alternative of at least equal value could be provided. The Borough Council did not consider this to be the case. It had made no comment about the proposed additional route.

(9) Cranbrook and Sissinghurst PC had initially supported the proposal but had then reconsidered and objected on the grounds that the route was some 400m longer than the original; that the current line was well used and pivotal in picking up the path to Sissinghurst; that the applicant’s claim to the taking of a hay crop was inaccurate; that there was historical evidence that the path had been used for at least 250 years; that important views of Cranbrook would be lost; and that in the context of the emerging National Development Plan and the draft Local Plan, there could be large developments at Wisley, necessitating the provision of footpaths providing cohesion between settlements.

(10) The Ramblers had objected on the grounds that the path ran parallel to the drive and crossed at a point with excellent visibility. They claimed that the driveway was not busy driveway and that they did not believe there have been near accidents; that the path was nowhere near the house so there was no significant security aspect; that the perceived danger of farm machinery was wildly exaggerated; that the footpath did not use the electric main gate and they could not believe that a walker had damaged it; and that the reasons given were fabrications on the part of the owner who had purchased the land with the PROW and now wished to change it.

(11) The High Weald AONB Unit had submitted several historical maps in support of its comments that Kent County Council had a statutory duty to have regard to the purpose of conserving and enhancing the natural beauty of the High Weald AONB. This duty included the determination of applications for the diversions of PROWs. Objective R1 of the Management Plan stated an objective of maintaining the basic pattern and features of routeways. The current alignment of WC108 was of historic importance serving not only Great Swifts but historically Moat Farm (now gone). It had been used for the local movement of people stock and farm vehicles over 250 years between the farms, green and common and for access around Swifts Park. The diversion would therefore be damaging to the High Weald AONB and impact upon public enjoyment of the route by those who appreciated walking in the footsteps of their ancestors. The High Weald AONB Unit therefore objected to the diversion of the footpath.

(12) The Principal Legal Orders Officer moved on to consideration of the criteria for diversion set out section 119 of the Highways Act 1980. The first of these was whether it was expedient in the interests of the landowner or the public. He said that he considered that although not all the grounds put forward by the applicant would individually be sufficient to divert the footpath, the concerns of security and privacy were convincing. He drew attention to the gate some metres away from the main gate which varied from the legally- defined path and was used by the public. If the

Council were to strictly apply the Law and insist on the use of the main gate, it would pose significant security and privacy problems. Recent Case Law in Somerset had confirmed that this was a valid consideration. He therefore concluded that this test had been met.

(13) The Principal Legal Orders Officer then said that the remaining tests were to be applied at the confirmation stage if the first test was met (resulting in an Order being made). He then said that the path was to be diverted to reconnect with the same highway at the same points as currently existed. This meant that the application met the test on whether the points of termination would be as convenient.

(14) The Principal Legal Orders Officer pointed out the subjective nature of the remaining tests and the understandable difficulties this caused. He did not believe that the right of way would become substantially less convenient to the public. This was because it was an amenity path that was mainly used for recreational purposes. The diversion might increase the travelling distance for some users whilst reducing it for others. The headland path subject to the Creation Order was currently enjoyed by the public on an informal basis and the Order would formalise this arrangement.

(15) The Principal Legal Orders Officer did not consider that the diversion would be any less enjoyable to use, in terms of its physical nature, than the current route. Although the path was old, he did not consider it to be of intrinsic or specialist historic interest. He therefore did not consider that the proposed diversion would have any negative impact upon public enjoyment of the path as a whole, albeit that others might hold a different opinion.

(16) The Principal Legal Orders Officer said that there would be no detrimental effect on other land served by the existing path. There would also be no detrimental effect on other land served by the proposed new right of way.

(17) The Principal Legal Orders Officer said that the creation of the proposed new Public Footpath would add to the convenience and enjoyment of path users as well as providing a useful addition to the local rights of way network.

(18) The Principal Legal Orders Officer concluded his presentation by saying that he recommended that the proposed Public Path Diversion Order should be made as the legal tests for the making of the Order had been met. However, because of the subjective nature of the other tests (where many different views had been expressed), the County Council ought to take a neutral stance at any subsequent Public Inquiry.

(19) Mr John Donaldson (Ramblers) said that beauty was a subjective quality. In his opinion the public footpath was a historical route which afforded a fabulous view overlooking the Weald. Cranbrook and Sissinghurst PC had nominated the views of the windmill and of Benenden as *Protected Views*.

(20) Mr Donaldson went on to say that the current route of the Public Footpath WC108 was more convenient for walkers because it linked to WC103 at a much better point than the proposed diversion.

(21) Mr Donaldson then said that main electric gate was blocking the right of way. This problem could have been addressed by an application for diversion of the footpath to the side of the vehicular gate entrance.

(22) Mr Donaldson continued by saying that the current route was not a busy route and that it was nowhere near the landowner's home. The concerns about hay gathering were very unconvincing as there was very little dog excrement off the path. Any excrement that was on the path itself was irrelevant as far as hay gathering was concerned.

(23) Mr Donaldson added that the proposed new route would not be used by many people to walk into Cranbrook as they would continue to use Quakers Lane. The current dry route was much shorter than the proposed new one and would also be wet and muddy. Therefore, the proposed diversion was substantially less convenient for the public.

(24) Mr Brian Swann (Cranbrook and Sissinghurst PC) said that there should be no diversion. Any confusion over its route should be ameliorated by improved way marking. The path had never been used for hay production. The proposed new route was 400m longer than the current one, which was kept dry by the sunshine. The new route, by contrast would involve walking two sides of a triangle instead of directly. It was neither as convenient nor as enjoyable as the current route.

(25) Mr Swann then said that the historical value of the current path had been noted by both the Local History Society and the Cranbrook Preservation Society. It also enabled people to enjoy the perfect beauty of the countryside. It would be an absolute tragedy if it were lost.

(26) Mr Swann concluded by saying that the landowner could address the health and Safety concerns by creating an entrance to the left of the main gate and creating a new path from this entrance point to the north of the drive. He could then no longer be accused of blocking the PROW.

(27) Ms Claire Tester (Kent High Weald AONB Unit) said that the High Weald AONB Management Plan, which had been adopted by KCC, made the High Weald a homogenous area of beauty. This designation included its paths, roads and tracks. The aim was to avoid diverting routes unless absolutely necessary. This particular route had significant historical importance as it had been used by people and animals for 250 years. She concluded by saying that it was incorrect to say that the diversion would have no impact on the AONB.

(28) Mr Michael Wood (ET Landnet Ltd) said that the new route that would arise from the Creation Order would be to the same standard as the current route. He added that the diversion was in the Landowner's interest when all of the factors that had led to the application were treated as a whole.

(29) Mr Wood noted that some of the objectors had suggested creating a new entrance and diverting the path to the north of the drive. He said that, in practice, this was the route that many walkers used. In 2018, a walker had wandered off the official path and had been attacked by the landowner's dog, leading to a significant insurance payment. There had been other incidents in recent years, although these had been less serious in nature.

(30) Mr Wood said that the current loss of revenue from the taking of a hay crop due to the presence of dog excrement stood at £10k per year. The proposed new route would enable people who walked their dogs to Cranbrook to use the land on the other side of the fence and away from the road. Overall, the new route would certainly be less convenient for some and more convenient for others.

(31) Mr Wood said that when balancing the landowner's interest against loss of enjoyment, the Panel should take into account that there were very good views from the proposed new path. He added that he could not understand how objectors could claim that the current route had no impact on the landowner's property and its privacy. He asked the Panel to make both Orders

(32) The Principal Legal Orders Officer referred to correspondence from the Open Spaces Society that had previously been circulated to the Panel Members. This had claimed that the style of the report had been "tendentious." He said that all reports were written in the same style and that any perceived tendentiousness had not been intended.

(33) During discussion of the report, Members of the Panel raised concerns that there would be a considerable loss of amenity and enjoyment for walkers if the diversion were made, and that the diversion was in reality a very different path with a very inferior view.

(34) On being put to the vote, the proposed diversion was unanimously rejected whilst the proposed new length of Public Footpath was unanimously agreed.

(35) RESOLVED that:-

- (a) the application to make a Public Path Diversion Order to divert part of Public Footpath WC108 at Cranbrook be not approved on the grounds that there would be a considerable loss of amenity and enjoyment for walkers if the diversion were made, and that the proposed diversion is in reality a very different path with a very inferior view;
- (b) the application for the County Council to make a Public Path Creation Order to create a new length of Public Footpath in the vicinity of Great Swifts Manor at Cranbrook be approved; and
- (c) in the event of objections to the Order approved in (b) above, the matter be referred to the Planning Inspectorate, with the County Council retaining a neutral stance in respect of the proceedings thereafter.

8. Application to register land known as Hillminster Green at Minster-in-Thamet as a new Town or Village Green

(Item 5)

(1) The Public Rights of Way and Commons Registration Officer introduced the report on the application which had been made by Minster-in-Thamet PC under section 15 of the Commons Act 2015 and the Commons Registration (England) Regulations 2014. The Parish Council had acquired the land after the application had been made in October 2017. This meant that it would have been possible for it

to be treated as a voluntary dedication. As the investigation had nearly been completed, and it appeared that the legal tests under section 15 (2) were capable of being met in any event, it was decided to proceed with the application as it stood.

(2) The Public Rights of Way and Commons Registration Officer went on to briefly summarise the tests that all needed to be met in order for registration to take place. She said that use of the land had been “as of right” because it had taken place without force, secrecy or permission enabling rights to be acquired. The user evidence forms demonstrated that use of the land had been for the purposes of lawful sports and pastimes. The application site had been used by residents of the neighbourhood of Hillminster within the locality of the parish of Minster-in-Thamet. The user evidence forms evidenced that the land in question was used as a local focal point on a daily basis by a significant number of these residents. Use of the land had continued up to and beyond the date of application for the required 20 year period of 1997 to 2017. She therefore recommended that the land should be registered as a new Village Green.

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

(4) RESOLVED to inform the applicant that the application to register the land known as Hillminster Green at Minster-in-Thamet as a new Village Green has been accepted and that the land subject to the application be formally registered as a Village Green.

9. Application to register land known as Kingsmead Recreation Ground at Canterbury as a new Town or Village Green

(Item 6)

(1) The Public Rights of Way and Commons Registration Officer introduced the report on an application by Canterbury CC under section 15(8) of the Commons Registration Act 2006 to voluntarily register the land in question as a new Town or Village Green. The tests for applications of this nature required the County Council to be satisfied that the applicant was the owner of the land and that any necessary consents had been obtained. The County Council’s investigations had confirmed that this was the case. She therefore recommended that registration should take place.

(2) Ms Rebecca Booth (Canterbury CC) confirmed that the City Council was very content to accept the recommendations.

(3) Mr G K Gibbens (Local Member) said that no one had objected to the application and that Canterbury CC and the local community had worked together to bring this application about. This would enable the local residents to enjoy an area of green space in the urban centre of Canterbury.

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

(5) RESOLVED that the applicant be informed that the application to register the land known as Kingsfield Field at Canterbury has been accepted and that the

land subject to the application be formally registered as a Town or Village Green.

10. Application to register land known as Whimbrel Green at Larkfield as a new Town or Village Green

(Item 7)

(1) The Public Rights of Way and Commons Registration Officer introduced the report on an application by East Malling and Larkfield PC under section 15(8) of the Commons Registration Act 2006 to voluntarily register the land in question as a new Town or Village Green. The tests for applications of this nature required the County Council to be satisfied that the applicant was the owner of the land and that any necessary consents had been obtained. The County Council's investigations had confirmed that this was the case. She therefore recommended that registration should take place.

(3) Mrs T Dean (Local Member) was present for this item. She indicated that she did not consider it necessary to address the Panel.

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

(5) RESOLVED that the applicant be informed that the application to register the land known as Whimbrel Green at Larkfield has been accepted and that the land subject to the application be formally registered as a Town or Village Green.

By: Andrew Ballard – Principal Democratic Services Officer
 To: Regulation Committee – 28 January 2020
 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 2019 to 31 December 2019 and a brief comparison with transport appeals statistics from 2010 to 2018.

1. Home to School Transport Appeal Statistics 2019

(1.1) For the period between 1 January 2019 to 31 December 2019 a total of 166 individual appeals were considered by Member Transport Appeal Panels of this Committee. 54% 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 2018. An additional 61 appeals were received/scheduled but were not heard due to them being either reassessed by the Transport Team or withdrawn by the parent.

(1.2) There are a further 14 appeals that are still waiting to be heard which are scheduled for January/February 2020.

(1.3) It is interesting to note that in 2019 59% of the total number appeals were heard between August – 31 December 2019.

(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 – 2018

(2.1) For the period between 1 January 2018 to 31 December 2018 a total of 165 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 year, five complaints were received with zero faults being found and one outstanding decision still to be received. 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

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**TABLE 1
HOME TO SCHOOL
TRANSPORT APPEALS -1 JANUARY – 31 December 2019**

Month	Upheld	Not Upheld	Total Heard	% Upheld
January	3	1	4	75%
February	6	13	19	32%
March	5	5	10	50%
April	7	4	11	64%
May	2	0	2	100%
June	8	3	11	73%
July	7	4	11	64%
August	24	13	37	65%
September	5	4	9	55%
October	9	10	19	47%
November	9	16	25	36%
December	4	4	8	50%
TOTALS	89	77	166	54%

**TABLE 2
HOME TO SCHOOL TRANSPORT APPEALS - 2010-2018**

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%
2018	87	78	165	53%

Update on Planning Enforcement Issues

Item 7

Report by Head of Planning Applications Group to the Regulation Committee on 28th January 2020.

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 25 September 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 10) of 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, with 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 a further section on general site and compliance monitoring, incorporating the statutory chargeable element with relation to minerals development and final concluding comments.
7. The list of cases covered under the schedule, attached to Item 10 'Update of Planning Enforcement Cases' (Exempt report) in order of presentation are:
 01. **Mount Pleasant Farm**, Seasalter Lane, Yorkletts, Whitstable.
 02. **Double-Quick Farm**, Lenham, Maidstone

03. **Court Wood House**, New Barn Road, Southfleet
04. **Land to the rear of Salinas**, Darenth Wood Road, Dartford
05. **Fairfield Court Farm**, Brack Lane, Brookland, Romney Marsh.
06. **Fleetmix Ltd**, Aggregate Stockpile, Northfleet, Kent.
07. **Environment First Ltd**, Lested Farm, Chart Sutton, Maidstone
08. **Little Neverend Farm**, Pye Corner, Ulcombe.
09. **Highfield Residential Development / Meadow**, Faversham Road, Lenham
10. **Thirwell Farm**, Drove Lane, Hernhill
11. **George Bell Farm**, Plum Pudding Lane, Hernhill, Faversham
12. **Ashford Wastewater Treatment Works**, Canterbury Road, Bybrook, Ashford
13. **Stonepit Restoration Ltd**, Stone Pit 2, St James Lane, Greenhithe, Dartford.
14. **East Kent Recycling Site D**, Oare Creek, Faversham Kent
15. **Borough Green Sandpits**, Platt Industrial Estate, St Marys Platt.
16. **Blaise Farm Quarry**, AD Facility, Kings Hill, West Malling
17. **Wrotham Quarry**, Addington, West Malling
18. **Spires Academy**, Bredlands Lane, Sturry, Canterbury.
19. **Wentworth Primary School**, Wentworth Drive, Dartford
20. **Maypole Community Primary School**, Franklin Road, Dartford.
21. **Mayfield Grammar School**, Pelham Road, Gravesend.
22. **Three Lakes Caravan Park**, Murston, Sittingbourne
23. **Mount Joy**, Coombe Walk, Yorkletts.
24. **Hawthorn Cottages**, May Street, Herne Bay.
25. **Land at Stockbury Valley** (Longton Wood), Detling Maidstone.
26. **Water Lane / Moat Road**, Headcorn, Maidstone.

27. Rear of Orchard at Crouch Lane, Sandhurst, Tunbridge Wells

8. The above represents the current County Planning Enforcement workload. This ranges from County Matter cases at one end, through to supportive work in the public interest on district cases, at the other. Within that it further includes cases that are being investigated, which may ultimately not be for this Authority and strategy and case management advice to other regulatory authorities.

Meeting Enforcement Objectives*Workload focus*

9. The workload focus for the planning enforcement team since the previous Committee Meeting in September 2019 has been mainly divided between our core County Matter cases and a raft of district referrals. Compliance issues on sites permitted by the County Council is a further work stream. This in relation to Borough Green Sandpits (no.15, within paragraph 7 above) has involved the service of a Planning Contravention Notice on operational matters.
10. The district referral element is receiving particular attention at the moment, to assist all parties. A checklist and guidance are being produced, which should help inform the assessment process and clarify jurisdictional responsibilities. It also allows for continued attention on site, which ever of the planning authorities ultimately lead or assist in the case. Better initial documentation to the County Council from respective district councils would be a considerable help in this changeover procedure or as a basis for discussing jurisdiction, where legal advice is needed.

Government initiatives

11. Over the last few years the Government has become more attentive to environmental issues, including waste management. The 'Waste and Resources Strategy' links to the Government's 25 Year Environment Plan, where it has pledged to leave the environment in a better condition for the next generation. Waste its production, treatment and decisive enforcement, is intrinsic to the Government's plan for the environment. Historically waste management would be guided by the waste hierarchy with landfill being the least desirable option. Now the aim is for a circular economy of reuse, repair or recycle. This encapsulates the approach already taken in relation to enforcing restoration on contravention sites.
12. A new strategic approach to eliminating waste crime (Prevent, Detect and Deter) is also being rolled out by the Government. There is particular encouragement to the sharing of intelligence between front-line regulatory bodies, including our own County Planning Enforcement team. Government agencies such as the Environment Agency and Her Majesty's Revenue and Customs (HMRC), along with the police, help to complete multi-faceted teams, intended as appropriate, to be organised within Joint Units for Waste Crime (JUWC) crime. Internal organisational changes within the County Council are helping to facilitate such initiatives.
13. The Planning Enforcement team is alert to these initiatives at Government level. Our

strategic knowledge of individual and apparent networks of sites, along with their planning histories could prove to be a valuable asset in such a multi-agency and structured context.

Going forward

14. Organised crime and waste crime in particular, within the context of this report, remains pervasive. Tighter procedures and organisation between planning authorities will help. New powers and legislation from Government, will further assist and allow a more co-ordinated and holistic response. The full context of the problem must be understood and responded to decisively. The County Planning Enforcement team is providing as much input to this and case strategy advice as it can. The Waste and Resources Strategy has a chapter on waste crime, which contains greater operational detail on these new and emerging tools within the public sector armoury.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

15. 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

16. 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

17. The County Planning Enforcement workload remains at a high and challenging level. A number of cases are becoming increasingly tied to alleged criminal hubs and demonstrate aspects of organised crime, particularly in the handling of waste streams. Mainstream cases will respond to normal planning enforcement powers. However, a new set of working relationships with allied enforcement authorities are being developed to help in tackling more entrenched, sophisticated and damaging activities, in environmental and amenity terms, on site. Ultimately, Joint Units for Waste Crime (JUWC) should offer the kind of operational context that is required for this type of work.

Recommendation

18. I RECOMMEND that MEMBERS NOTE & ENDORSE:

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

Case Officers: KCC Planning Enforcement

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Background Documents: see heading.

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

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