REGULATION COMMITTEE

Thursday, 27th January, 2022

2.00 pm

Council Chamber, Sessions House, County Hall, Maidstone

Kent County Council
kent.gov.uk

AGENDA

REGULATION COMMITTEE

Thursday, 27th January, 2022, at 2.00 pm
Council Chamber, Sessions House, County Hall, Maidstone

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

Membership (15)

Conservative (12):	Mr S C Manion (Chairman), Mrs S Hudson (Vice-Chairman), Mr P Cole, Mr M C Dance, Ms S Hamilton, Mr D Jeffrey, Mr R C Love, OBE, Mr R A Marsh, Mr J M Ozog, Mrs L Parfitt-Reid and Mr T L Shonk
Labour (1):	Mr B H Lewis
Liberal Democrat (1):	Mr I S Chittenden
Green and Independent (1):	Mr M Baldock

Webcasting Notice

Please note: this meeting may be filmed for live or subsequent broadcast via the Council's internet site – at the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed.

By entering the meeting room you are consenting to being filmed and to the possible use of those images and sound recordings for webcasting and/or training purposes. If you do not wish to have your image captured then you should make the Clerk of the meeting aware.

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: 23 September 2021
   (b) Member Panel: 2 December 2021

4. Home to School Transport Appeals Update (Pages 15 - 18)

5. Update from the Public Rights of Way and Access Service - Common Land and Village Greens (Pages 19 - 24)

6. Update on Planning Enforcement Issues (Pages 25 - 32)

7. Other Items which the Chairman decides are Urgent

8. Motion to exclude the public

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

EXEMPT ITEMS

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

9. Update on Planning Enforcement cases (Pages 33 - 56)

Benjamin Watts
General Counsel
03000 416814

Wednesday, 19 January 2022

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.

This page is intentionally left blank

KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Thursday, 23 September 2021.

PRESENT: Mr S C Manion (Chairman) Mr M Baldock, Mrs P T Cole (Substitute for Mrs L Parfitt-Reid), Mr P Cole, Mr M C Dance, Ms S Hamilton, Mr D Jeffrey, Mr B H Lewis, Mr R C Love, OBE, Mr R A Marsh, Mr J M Ozog, Mr H Rayner (Substitute for Mrs S Hudson) and Mr T L Shonk

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

UNRESTRICTED ITEMS

15. Minutes - 1 July 2021
(Item 3)

RESOLVED that the Minutes of the meeting held on 1 July 2021 are correctly recorded and that they be signed by the Chairman.

16. Update from the Public Rights of Way and Access Service
(Item 4)

(1) The Public Rights of Way and Access Service Manager introduced the report which concentrated on applications related to Public Rights of Way, including legislative updates. He said that the report to the January meeting of the Committee would contain a focus on Village Green applications.

(2) The Committee agreed to hold a virtual training session on Public Rights of Way and Village Greens on 15 October 2021.

(3) RESOLVED that:-

(a) the report be noted; and

(b) A virtual training session on Public Rights of Way and Village Green issues be held on 15 October 2021.

17. Update on Planning Enforcement Issues
(Item 5)

(1) The Head of Planning Applications Group introduced the report which covered the work of the Planning Enforcement Team since 1 July 2021. She referred to paragraph 21 of the report which explained that the Local Government Association and planning peer groups were becoming increasingly concerned over the impact of Environment Agency Permits being issued to waste management activities in the

absence of planning permission. Change to this process could only be made by Government Legislation. In the meantime, the Environment Agency had to act in accordance with the Law as it stood.

(2) Mr H Rayner moved, seconded by Mr R A Marsh that:

"The Committee encourages the Cabinet Member for Finance to allocate additional resources to the Planning Enforcement Team to enable a more prompt and effective enforcement service to be delivered to Kent residents.

(3) During discussion of this motion, Mr Rayner clarified that his concern about the enforcement service was purely in respect of the resources allocated to it. This in no way implied a criticism of the officers providing the service as he held them in the highest regard.

(4) On being out to the vote, the motion set out in (2) above was carried by 7 votes to 5 with 1 abstention.

(5) The Chairman agreed to write to the Cabinet Member for Finance setting out the Committee's views.

(6) RESOLVED that;-

(a) the actions taken or contemplated in the report be noted and endorsed; and

(b) the Cabinet Member for Finance, Corporate and Traded Services be encouraged to allocate additional resources to the Planning Enforcement Team to enable a more prompt and effective enforcement service to be delivered to Kent residents.

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)

18. Update on Planning Enforcement cases

(Item 8)

(1) The Head of Planning Applications Group and the Team Leader-Planning Enforcement gave an update on unauthorised (or part unauthorised) planning enforcement matters setting out actions taken or contemplated at Raspberry Hill Park Farm, Iwade; Warden Point, Eastchurch; Surf Crescent, Eastchurch; Foxdene, Stockbury; Chetney Marshes, Iwade; Springhill Farm, Fordcombe; Water Lane, Thurnham; Hoads Wood Farm, Bethersden;; Double Quick Farm, Lenham; Woodside East, Nickley Wood Road, Shadoxhurst; Ringwould Alpine Nursery; Fairfield Court Farm, Brack Lane, Brooklands, Romney Marsh; Chapel Lane, Sissinghurst; Worth Centre, Jubilee Road, Worth; East Kent Recycling, Oare Creek, Faversham; Cobbs Wood Industrial Estate, Ashford; Court Lodge Farm, Stack Road, Horton Kirby; R S Skipps, Apex Business Park, Shorne; Flisher Energy, Fernfield Lane, Hawkinge; Site formerly occupied by Sall Haulage Ltd, Unit 2, Katrina Wharf, Wharf Road, Gravesend; Cube Metals, Unit A, Highfield Industrial Estate, Bradley Road, Folkestone; Borough Green Sandpits; Aggregates recycling Facility, land to the south of Manor Way Business Park, Swanscombe; and Wrotham Quarry (Addington Sandpit), West Malling.

(4) RESOLVED that the enforcement strategies outlined in paragraphs 14 to 125 of the report be noted and endorsed.

This page is intentionally left blank

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 Thursday, 2 December 2021.

PRESENT: Mr S C Manion (Chairman), Mrs S Hudson (Vice-Chairman), Mr M Baldock, Mr J M Ozog and Mrs L Parfitt-Reid

IN ATTENDANCE: Ms M McNeir (Public Rights Of Way and Commons Registration Officer), Mr G Rusling (Public Rights of Way & Access Service Manager), Ms S Bonser (Senior Solicitor. Invicta Law) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

5. Application to register land known as Two Fields at Westbere as a new Town or Village Green
(Item 4)

(1) The Public Rights of Way and Commons Registration Officer introduced the report by saying that the County Council had received the application to register an area of land known as Two Fields at Westbere as a new Town or Village Green from the Two Fields Action Group. This application had been made under section 15 of the Commons Act 2006.

(2) The Public Rights of Way and Commons Registration Officer continued that the application had previously been considered at a meeting of the Regulation Committee Member Panel on 24th February 2021 when the recommendation, based on legal advice received at that time, had been to reject the application on the grounds that the application site was affected by one of the 'trigger events' set out in Schedule 1A of the Commons Act 2006. The Panel had, however, not been sufficiently satisfied that a "trigger event" had occurred and determined that the matter should be referred to a Public Inquiry for further consideration.

(3) Following the meeting, a Pre-Action Protocol letter was received from legal advisors acting on behalf of one of the affected landowners, Bellway Homes Ltd. This advised the County Council that it was their intention to make an application to the High Court for a Judicial Review of the Member Panel's decision on the basis that it was wrong in law because the application was affected by a "trigger event" prevented the County Council from considering the application further. Consequently, the County Council had sought a second opinion on the matter from Mr. David Forsdick QC. The advice received was that the issue in question was far from clear-cut and that the available case law was open to interpretation. He had suggested that the County Council ought to take further representations on the issue of the alleged "trigger event" the and, following consultation with the

relevant parties, this could be achieved by way of written submissions (as opposed to hearing oral representations in a Public Inquiry forum). It was then agreed that the County Council would proceed to further consider the issue of whether a "trigger event" existed prior to reaching a final verdict on this matter.

(4) The Public Rights of Way and Commons Registration Officer turned to consideration of the issues involved. She said that the case turned upon whether the application site was affected by one or more of the "trigger events" set out in Schedule 1A of the Commons Act 2006. For example, if the application site was affected by a planning application or had been identified for development in a local or neighbourhood plan, the County Council would not be able to consider an application to register the land in question as a Village Green.

(5) The Public Rights of Way and Commons Registration Officer said that in this case, two of the affected landowners had submitted that the application site was the subject of one of the trigger events specified in Schedule 1A as paragraph 4 of Schedule 1A stated that:-

"a development plan document which identifies the land for potential development is adopted under section 23(2) or (3) of the [Planning and Compulsory Purchase Act 2004]."

(6) The Public Rights of Way and Commons Registration Officer then quoted the relevant section of Canterbury City Council's Local Plan which identified the entirety of the application site as a "Green Gap" under Policy OS6, which stated that:

"Within the Green Gaps identified on the Proposals Map… development will be permitted where it does not:
(a) Significantly affect the open character of the Green Gap, or lead to coalescence between existing settlements;
(b) Result in new isolated and obtrusive development within the Green Gap.

Proposals for open sports and recreational uses will be permitted subject to there being no overriding conflict with other policies and the wider objectives of the Plan. Any related built development should satisfy criteria (a) and (b) above and be kept to a minimum necessary to supplement the open sports and recreation uses, and be sensitively located and of a high quality design".

(7) The Public Rights of Way and Commons Registration Officer said that the landowners' position was therefore that the application site was identified in the Local Plan for potential development.

(8) The Public Rights of Way and Commons Registration Officer then set out the applicant's position which was that the designation of "Green Gap" was not one of the land being identified as suitable for development, but rather that it designated its unsuitability, albeit that exceptions might be made for developments that would be compatible with continued recreational use and the retention of the land as an open space between settlements.

(9) The Public Rights of Way and Commons Registration Officer explained that the original advice received from Counsel (upon which the previous Member Panel report had been based) was that Policy OS6 *did* serve to identify "Green Gaps" as having the potential for development and therefore operated as a "trigger event" under Schedule 1A of the Commons Act 2006. Counsel had, however, also noted that her advice was based upon a particular interpretation of the policy in the light of the comments of the High Court in recent case law (known as the *Cooper Estates* case), and that this case law could potentially be open to different interpretation and application.

(10) Mr David Forsdick, QC was then appointed to act as the Inspector in order to give the matter further consideration as agreed by the February Member Panel in February 2021. He invited further submissions from all interested parties before preparing a report (which was appended to the papers) which set out his conclusions and advice as to how the County Council should proceed. His conclusions were guided by the Court of Appeal's judgement in the *Cooper Estates* Case. This case held that the word "identified" had the meaning to establish or recognise, that "potential development" was a very broad concept that was not to be equated with likelihood or probability, and that "identification" might be contrasted with "allocation" where a site was allocated for a particular use. Thus, for a "trigger event" to exist, it was not necessary for the land in question to be formally allocated for potential development, it merely needed to be 'identified' as such. However, the fact that the Local Plan encouraged development was not sufficient and there had to be a "sufficient nexus" between the relevant plan and the application site.

(**11) The Public Rights of Way and Commons Registration Officer's description of the Inspector's findings are set out in (12) to (17) below.**

(12) The situation in *Cooper Estates* concerned a piece of land in the market town of Royal Wootton Bassett in which the land in question was not allocated or specifically identified for development, but where the relevant local plan document identified the market towns in the area which had the potential for significant development and provided that, within the settlement boundary of those towns, there would be a "presumption in favour of sustainable development." Accordingly, it had been considered in that case that the land was identified for potential development because, by implication, the land within the defined settlement boundary was already considered developable land.

(13) In reaching that decision, the Court had not "ruled out the possibility that prima facie identification of the land for potential development by one policy could be contradicted by countervailing policies elsewhere in the plan." In this regard, the Inspector had considered that the fundamental starting point, in the current case, was to understand the Local Plan fully and as a whole because, although one policy read alone might appear to identify the land for development,

"that may be contradicted by other provisions of the Plan which show that the policy in fact adds a layer of constraint to other generally applicable policies."

(14) In reviewing the Local Plan, the Inspector had noted that its overarching objective (in addition to protecting existing open space) was to 'improve the

distribution, accessibility, quality and connectivity of open space" and that the designation of "Green Gaps" served to retain separate identities of settlements by preventing their coalescence. He had noted that:

"The green gaps policy is thus designed to supplement the general policy (nationally) of restraints outside urban areas and in the countryside. It is explicitly designed to provide a more restrictive approach than in the countryside generally. The criteria for development in OS6 are thus additional to the criteria for such development in the countryside and more generally applicable policies…"

"Far from identifying the Land for potential development, it is thus clear from the supporting text that the green gaps were designed to supplement the policy of restraint in the more generally applicable countryside policies. They add a further factor into the assessment – namely the need for any otherwise acceptable development under those other policies to avoid coalescence."

(15) The Inspector had acknowledged that, taken alone, Policy OS6 would permit development within the green gaps if it satisfied the criteria and could be understood as identifying the land for some limited forms of potential development. However, in his view, looking at Policy OS6 in isolation was not the correct way of approaching the statutory question and, instead, it was necessary to understand the Policy in the context of the rest of the Local Plan to understand whether it identified the land for development.

(16) The application site (in common with all non-urban countryside areas within the district) was subject to multiple policies which constrained, but did not altogether prohibit, development. In this respect, the Inspector stated that:

"There is no identification of any specific area or land which will or may be developed as a result. It is to my mind impossible to construe policies of general application across the countryside (with criteria for possible certain forms of development) as "identifying" any given areas of land for potential development. Such policies do not identify any land for development – they identify a potential for certain forms of development to come forward in unidentified, unidentifiable and undetermined locations in the countryside if certain conditions are met."

"If such policies were sufficient to satisfy the statutory test, it would mean that the Plan here constituted a trigger event for apparently the whole of the Council's area because all the Council's area is subject to policies which are permissive of some forms of development in some circumstances (even the local green spaces). Across the country, any countryside restraint policy which was permissive of some development in some circumstances… would disapply the 2006 Act for all that countryside. I cannot read the statute, its underlying logic or Cooper [Estates] as requiring that result…

Fundamentally, I do not regard the fact that policies may be permissive of some development in some circumstances as sufficient to mean they "identify" any specific land for potential development."

(17) With that in mind, and when reading Policy OS6 in the context of the rest of the Local Plan, the Inspector had found that:

"it is clear that it: (1) applies an added layer of constraint; and/or (2) highlights an extra factor for consideration when proposals for development in the countryside and in a green gap come forward."

In reaching that view, the Inspector had noted that although Policy OS6 was, of itself, expressly permissive of development (subject to limitations), when read in the context of the rest of the Plan, its effect was to impose additional constraints on all forms of development within the Green Gaps. The Inspector had therefore concluded

"that the Plan properly construed as a whole does not "identify" the Land for potential development… The land is in the countryside, all of which is outwith the focus of the spatial strategy and is an area of restraint. Being part of the countryside, it is subject to a number of generally applicable policies which are restrictive of development but which allow certain forms of development in certain circumstances and subject to certain criteria. Those wider policies cannot be properly understood as "identifying" land for potential development. OS6 is a specific policy which adds an extra layer of constraint in the green gaps – cutting down on the limited potential for development in the countryside generally under the generally applicable policies. I therefore cannot read it as identifying the land for potential development.".

(18) The Public Rights of Way and Commons Registration Officer then said that the Inspector's report had been forwarded to all interested parties for their information and further comment.

(19) The Public Rights of Way and Commons Registration Officer said that, whilst accepting that the issues raised in this matter concerned difficult, important and untested points of law, Bellway Homes Ltd considered that the Inspector had nonetheless reached the wrong conclusion in relation to the existence of a "trigger event" in respect of the application site. They submitted that Policy OS6 identified the land for development and, contrary to the Inspector's views, there were no countervailing policies in the Canterbury Local Plan to directly contradict that identification. They further submitted that there was no reference in Schedule 1A of the Commons Act 2006 to any requirement to consider the totality of the context, or to construe the Local Plan as a whole, and that therefore the Inspector's approach was to effectively re-write the "trigger event" in question. Moreover, the rationale of introducing Schedule 1A was to ensure that land was protected via the planning system rather than via registration of land as a Village Green.

(20) The Public Rights of Way and Commons Registration Officer then said that the applicant had welcomed the Inspector's findings and supported the reasoning set out by the Inspector. The applicant's view was that the Local Plan contained a number of policies restricting development in the area, and that Policy OS6 was in substance a restrictive policy comprising constraints (in terms of extend and kind) on any development coming forward on the application site. They submitted that the circumstances in this case were plainly different to that in *Cooper Estates* (where there was a presumption in favour of sustainable development within a defined settlement boundary) and that to find in favour of a "trigger event" in the

current case would be wholly inconsistent with the statutory purpose for which Schedule 1A was brought into force (because to do so would effectively render section 15 of the Commons Act 2006 redundant in the majority of cases).

(21) The Public Rights of Way and Commons Registration Officer said that the comments received have been forwarded to the Inspector who had confirmed that they did not change his conclusions or advice to the County Council.

(22) The Public Rights of Way and Commons Registration Officer moved on to explain her conclusions. She noted that the County Council had received conflicting legal advice on this matter. The earlier advice had indicated that on a strict reading of the Policy wording it appeared that the site had been identified for potential development (because the Policy specifically provided for development to take place). The latter advice has concluded that, on a wider interpretation of the plan as a whole, the Policy could not be seen as specifically identifying the application site for development.

(23) The Public Rights of Way and Commons Registration Officer explained that the County Council was not legally bound by either legal advice received and had to reach its own decision in relation to this matter.

(24) The Public Rights of Way and Commons Registration Officer continued that the latest advice had been reached entirely independently and been uninfluenced by the Panel's earlier decision. It had taken a wholly different approach of viewing the Policy in the wider context of the rest of the Local Plan and considering the document as a whole to determine whether it identified the land for potential development.

(25) The Public Rights of Way and Commons Registration Officer said that in her view, there was merit in the broader approach to the matter given by the Inspector. Lord Justice Lewison had acknowledged in the *Cooper Estates* case that the phrase that the Court was being called upon to interpret was "imprecise" and had also noted that each side had been able to point to potential difficulties if the other side was right. For that reason, he had considered it:

"imperative, in my judgement, to interpret it in accordance with the policy underlying the change in the law. That policy, as I understand it, was that whether or not to protect a piece of recreational land with identified development potential should be achieved through the planning system and not by means of registration as a TVG [Town or Village Green]… [in this case] to allow a registration of a TVG within the settlement boundary would, in my judgement, frustrate the broad objectives of the plan. That is precisely the reason why Parliament decided that, in circumstances like the present, a TVG should not be registered; but, instead, the question of development should be left to the planning system".

(26) The Public Rights of Way and Commons Registration Officer continued by saying that the factual circumstances in Cooper Estates were that the land in question fell within a defined settlement boundary for which there was a positive presumption in favour of development within the Local Plan in order to achieve the over 1,000 new homes needed in Royal Wootton Bassett during the currency of the Plan. This position was clearly in contrast to the current case where the

land had been identified as a “Green Gap” for the specific purpose of retaining the open character of the land and preventing coalescence between the settlements of Westbere and Sturry. Registration of the application site as a Village Green in this case (if that were ultimately to happen) would not frustrate the broader objectives of the Canterbury City Council Local Plan.

(27) The Public Rights of Way and Commons Registration Officer added that when viewing the matter, from the perspective of the underlying policy in relation to “trigger events” (as had happened in the *Cooper Estates* case) it was clear that if a “Green Gap” was considered to identify land for potential development then that interpretation would effectively sterilise almost all land in the City Council’s area (and indeed nationally) against any potential application under section 15 of the Commons Act 2006. This could not have been Parliament’s intention in enacting Schedule 1A of the Commons Act 2006. Indeed, the original purpose of Schedule 1A had been to prevent section 15 of the Commons Act 2006 being used to frustrate planned or intended development. It could not have been envisaged as a mechanism to curb the potential for Village Green applications to be made altogether.

(28) Whilst acknowledging that the matter was not clear cut and that the relevant law not settled, the Public Rights of Way and Commons Registration Officer considered on balance that the advice received from the Inspector was sound and that it offered a strong basis upon which to reach a considered decision in this matter. She recommended accordingly.

(29) The Public Rights of Way and Commons Registration Officer then gave the procedural advice that the Panel had to determine the “trigger event” issue alone at this stage. If the Panel accepted her advice that no trigger event existed, then the application would be to a Public Inquiry to consider the more substantive factual issues of the case. If the Panel did not agree with the recommendation - and instead determined that the application site was affected by a “trigger event” - then the Village Green application would be rejected, with no further action being taken by the County Council.

(30) The Public Rights of Way and Commons Registration Officer concluded by saying that determination of Village Green applications was a quasi-judicial function of the County Council and that any financial implications could have no bearing whatsoever on the Panel’s decision. She added that, whatever decision was reached, there was a likelihood that it would be subject of an application to the High Court for Judicial Review.

(31) In response to questions from Mr Baldock, the Public Rights of Way and Commons Registration Officer said that the *Cooper Estates* case judgement had been made by the Court of Appeal and had not been referred to the Supreme Court. In the event that the Panel decided that there had been no “trigger event”, it would be prudent in this case to delay arrangements for the Public Inquiry to enable the landowners to consider whether to challenge the Panel’s decision in the courts. Any application for Judicial Review would need to be made no later than three months from the date of the decision.

(32) Dr Antonie G van den Broek addressed the Panel on behalf of the applicants. He said that they agreed with the Inspector's conclusions as Policy OS6 of the Canterbury Local Plan had the effect of adding an extra restraint to the development of the land in question. He considered it significant that Canterbury CC had indicated to Bellway Homes that an application for them to develop was likely to be rejected. In addition, Parliament had clearly not intended that an application such as this would be automatically rejected when it had passed Schedule 1A of the Commons Act 2006 into Law. When reaching its decision, the Panel should consider whether to agree with the first advice to simply look at Policy O56 in isolation or the second advice which had examined the Plan in its totality and offered a further two rounds of consultation after setting out a draft opinion. He believed that the Law was clearly on the side of the applicants in this instance.

(33) The Clerk to the Committee said that Eleanor Andrews from Winckworth Sherwood LLP had written on behalf of the landowners, Bellway Homes to request that correspondence be read out to the meeting. This is set out below:

Letter of 30 November 2021

"Dear Sirs.

Thank you for your email dated 8 November 2021 informing us of the Regulation Committee Member Panel meeting and your further email of 23 November 2021 enclosing a copy of the agenda papers.

We can confirm, on behalf of Bellway Homes Limited, that its position remains as per the letter dated 5 July 2021 a copy of which is attached.

Bellway Homes Limited does not require slot to make representations and instead asks that the 5 July 2021 letter is provided in the pack to members and is read aloud to the members at the meeting.

If you require anything further please do not hesitate to contact us.

Yours faithfully "

Letter of 5 July 2021

"Dear Sirs

Further to your email dated 16 June 2021 we do wish to make further short submissions in relation to the Report of the Examining Inspector dated 9 June 2021 as follows:

1. We agree with the Inspector that the issues in relation to the existence of a trigger event in this case raise difficult, important and untested points of law. However, as we explain, briefly, below, he has reached the wrong conclusion.

2. As set out at paragraph 16 of his Report, in Cooper the Court of Appeal did not rule out the possibility that the prima facie identification of the land for potential development by one policy could be contradicted by countervailing policies elsewhere in the plan. Thus in that case it was necessary to examine the Wiltshire Core Strategy to see whether there were any countervailing policies which contradicted the identification of the land for potential development by CP1 and CP2. There were none.

3. Similarly, we say, in the present case OS6 identifies the land for potential development and there are no countervailing policies which contradict that identification; in particular, neither HD3 nor OS8 are such policies.

4. Although the Inspector expressly says that he is applying the same approach as applied in Cooper, in fact he is doing something different. His starting point is with policy HD3. He says that this does not identify land for potential development. He then goes on to say that OS6 supplements the policy of restraint and that reading OS6 in the light of HD3, it does not identify land for potential development. Similarly, he says that OS8 does not identify land for potential development. He then goes on to say that OS6 adds further, stricter criteria requirements for development and that reading OS6 in the light of OS8, it does not identify land for potential development.

5. The Inspector is correct to say that neither HD3 nor OS8 identify land for potential development. But this does not mean that they are countervailing policies which contradict the identification of land for potential development by OS6. They are not. Thus although we agree with the Inspector that the factual circumstances of the present case are different in some respects from those of Cooper, in a key respect they are the same: there is in both cases a policy which identifies land for potential development and in both cases there are no countervailing policies. The Inspector, on the other hand, in effect rewrites schedule 1A to hold that a trigger event has not occurred despite the fact that the land is identified for potential development, holding that looking at the totality of the context8 the land is not identified. Reference to the totality of the context or construing the plan as a whole does not entitle the decision-maker to set aside the plain words of the Act in their application to the words in the development plan. The Inspector was correct to be drawn to the argument that the permissive nature of OS6 was decisive in favour of the objectors. Moreover a conclusion based on such an argument is consistent with the rationale of the amendment to the Commons Act 2006 by the Growth and Infrastructure Act 2013, whereby this particular piece of open space is protected through the planning system and not the TVG system.

For these reasons we have advised our client that if the Registration Authority were to adopt the reasoning set out in the Inspector's Report, and determine that no trigger event has occurred, then that decision would be liable to challenge by way of judicial review.

Our client's position in this regard is expressly reserved.

Yours faithfully"

(34) The Panel moved on to consider its decision. Mr Baldock said that in his view, the landowners had misunderstood the purpose of a Local Plan which could never rule out any development whatsoever as each application had to be considered on its merits. It was only possible to apply specific restrictions when the Plan was being developed. The Green Gap Policy acted in this way. He could not understand how any other interpretation of the Local Plan could be held, and moved the recommendations in the report.

(35) Mr Ozog seconded the motion, saying that he was in full agreement with the argument made by Mr Baldock.

(36) Mrs Parfitt-Reid said and Mrs Hudson concurred that Local Plans had to be looked at in the round rather than taking each policy in isolation.

(37) On being put to the vote, the motion proposed by Mr Baldock and seconded by Mr Ozog was agreed unanimously.

(38) RESOLVED that the legal advice dated 9 June 2021 be accepted to the effect that no trigger event exists in relation to the application site and that a Public Inquiry be held to consider the substantive issues of the case.

By: Andrew Ballard – Principal Democratic Services Officer

To: Regulation Committee – 27 January 2022

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 2021 to 31 December 2021 and a brief comparison with transport appeals statistics from 2010 to 2020.

---

1. Home to School Transport Appeal Statistics 2021

(1.1) For the period between 1 January 2021 to 31 December 2021 a total of **118** individual appeals were considered by Member Transport Appeal Panels of this Committee. **60%** 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 2020. An additional 23 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 3 appeals that are still waiting to be heard which are scheduled for January/February 2022.

(1.3) It is interesting to note that in 2021 the majority the total number appeals were heard between August – 31 December 2021.

(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. Changes to the process due to Covid

(2.1) As a result of Covid and national and regional lockdowns, revised arrangements were made in order to facilitate appeals. Parents were provided with three options as to how they wished their appeals to be heard. These options were, face to face appeals as and when local restrictions

allowed, virtual appeals via video conference on Microsoft Teams; and finally, paper-based appeals where Members considered the case based on the written submissions only. The following table provides Members with a breakdown of how appeals were facilitated during 2021.

	Appeals heard
Paper Based Appeals	27
Virtual Appeals	71
Face to Face	20

3. Transport Appeal Statistics – 2020

(3.1) For the period between 1 January 2020 to 31 December 2020 a total of 118 appeals were considered by Transport Appeal Panels. 76 were upheld at least in part (e.g. time-limited assistance).

4. Local Government & Social Care Ombudsman

(4.1) 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.

(4.2) During the last year, 4 complaints were received with 3 with no faults being found and one decision still outstanding. The LGSCO provide a breakdown of their findings at https://www.lgo.org.uk

5. Recommendation Members are asked to note this report.

Appendix A – Home to School Transport appeal table

Andrew Ballard
Principal Democratic Services Officer
Tel No: 03000 415809,e-mail: andrew.ballard@kent.gov.uk

Appendix A

TABLE 1
HOME TO SCHOOL
TRANSPORT APPEALS -1 JANUARY – 31 December 2021

Month	Total Scheduled	Total Heard	Upheld	Not Upheld	% Upheld
January	18	15	5	9	30%
February	1	1	1	0	100%
March	6	6	5	1	%
April	14	11	9	2	80%
May	2	2	1	1	50%
June	7	7	3	4	40%
July	9	9	8	1	90%
August	23	20	14	6	70%
September	8	6	4	2	70%
October	26	19	15	4	80%
November	17	13	6	7	50%
December	10	9	4	5	40%
TOTALS	**141**	**118**	**75**	**42**	**60%**

TABLE 2
HOME TO SCHOOL TRANSPORT APPEALS - 2010-2020

Year	Upheld	Not Upheld	Total Heard	% 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%
2019	89	77	166	54%
2020	76	42	118	64%

Update from the Public Rights of Way & Access Service
Common Land and Village Greens

A report by the Public Rights of Way and Access Service Manager to Kent County Council's Regulation Committee on Thursday 27th January 2022.

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

Progress with the determination of Village Green Registration Applications

1 This report provides a brief overview of the progress made in determining applications to register Town and Village Greens in the county of Kent.

1.1 Under section 15(1) of the Commons Act 2006, any person may make an application to the County Council, in its capacity as the 'Commons Registration Authority', to register land as a new Town or Village Green, provided that it can be shown that the land has been used:

- As of right (i.e without force, secrecy, or permission);
- For a period of at least 20 years;
- For the purposes of lawful sports and pastimes;
- By a significant number of the inhabitants of any locality or any neighbourhood within a locality; and
- Use has continued up to the date of application or, where use has ceased to be as of right, it did so no more than one year prior to the date of application.

1.2 It is to be noted that, as a result of changes introduced under the Growth and Infrastructure Act 2013, the County Council may not consider applications to register new Village Greens where the land in question is subject to a planning application or has been identified for development in a Local or Neighbourhood Plan. These are known as 'trigger events' and the full list can be found in Schedule 1A of the Commons Act 2006. If, following consultation with the relevant planning authorities, it is found that an application site is affected by a 'trigger event', the application must be returned to the applicant with no further action taken by the County Council.

1.3 If the County Council is able to progress with the application (i.e. there are no live 'trigger events'), the application will be advertised for a period of six weeks by way of notices on site and on the County Council's website. Any representations will then be forwarded to the applicant for comments. As there are no Officer delegated powers in relation to applications made under the Commons Act 2006, all applications are ultimately referred to a Regulation Committee Member Panel for determination. The Panel will then normally decide whether to accept the application (and register the land as a Village Green), reject the application, or refer the matter to a Public Inquiry for further consideration.

1.4 In determining Village Green applications, the County Council must rigidly apply the criteria set out in section 15(1) of the Commons Act 2006 and summarised at paragraph 1.1 above; no account may be taken of other matters, such as the

suitability or desirability of registering the land as a Village Green. It should also be noted that the County Council does not, itself, have the power to investigate applications and therefore, where there is a conflict in the evidence provided or facts are disputed by the parties involved, an Inspector (who is normally a Barrister specialising in this area of law) is appointed and Public Inquiry held at which evidence, both in support of and in opposition to the application, is heard. The Inspector will prepare a report and a recommendation, having had the opportunity to hear all of the evidence, although that recommendation is not legally binding upon the County Council and the decision ultimately rests with the Regulation Committee Member Panel.

1.5 The determination of Village Green applications is a quasi-judicial function of the County Council and, as such, the only right of appeal against a decision of the Member Panel is by way of an application for Judicial Review of the decision in the High Court (on the basis that the decision was unlawful, unreasonable or the subject of some sort of procedural impropriety).

1.6 Village Greens enjoy significant statutory protection. Under the Inclosure Act 1857, it is a criminal offence to (amongst other things) undertake any acts which cause injury to the surface of the green or interrupt the use and enjoyment of the green as a place for exercise and recreation (e.g erect fencing), and under the Commons Act 1876 it is considered a public nuisance to encroach upon, enclose or erect any structures on a Village Green. Accordingly, the registration of land as a Village Green places a significant constraint upon its future use by the landowner and it is therefore no surprise that applications to register land as Village Green are often strongly contested.

1.7 The determination of Village Green applications is made all the more complex by the constantly evolving case law – indeed, it was once described by a Court of Appeal judge as ‘an area of unusually vigorous legal activity’. For example, in 2015 a whole new legal test, known as the ‘statutory incompatibility’ test, emerged from the decision of the Supreme Court in the Newhaven Port case (in which it was held that the recreational rights cannot be acquired over land in cases where such rights would be incompatible for the statutory purposes for which the land was held). In the last 3 years, a further three cases have been all the way up to the Supreme Court on this issue alone. This constant evolution in the manner in which the legal tests are to be interpreted has had a direct bearing on the progress and determination of a number of applications made to the County Council; in two current applications, there have been significant delays pending the outcome of the other cases before the Supreme Court which potentially have a direct bearing upon the recommendation to the Member Panel.

Voluntary applications to register land as a Village Green

2 Under section 15(8) of the Commons Act 2006, it is possible for any landowner to apply to the County Council to register land in their ownership as a new Village Green. This can be a useful tool for Parish Councils seeking to protect their land against any future development (for example, to safeguard against a future Council seeking to sell the land for development) and also to ensure that amenity land provided as part of new developments is afforded the strongest form of statutory protection against any future changes.

2.1 As is noted above, once land is registered as a Village Green its use is severely constrained by the Victorian statutes (such that registration requires careful consideration as it may not always offer the best solution), but a number of Parish and District/Borough Councils across the county have nonetheless utilised this legislation to protect their land.

2.2 Applications to voluntarily register land as a new Village Green are considerably more straightforward as they need not include any evidence of previous recreational use. All that is required is proof of ownership and (if applicable) the written consent of anyone else with a legal interest in the land.

Current Village Green Applications

3. Since 2005, the County Council has determined just under 100 applications made under section 15 of the Common Act 2006, resulting in the registration of 52 new Town or Village Greens (often after a Public Inquiry). The implementation of the Commons Act 2006 – which replaced previous legislation and for which Kent was one of seven 'pilot authorities' to trial the updated legislation and new provisions – resulted in an influx of Village Green applications and led to a backlog of 9 to 12 months between an application being received and work commencing on it. Today, those backlogs have been cleared and it is normally possible to begin working on a new application fairly soon after confirmation by the relevant planning authorities that no 'trigger events' apply in relation to it.

3.1 There are currently 7 outstanding applications to record Village Greens and these are listed at **Appendix A**. Two of those applications have been the subject of very lengthy Public Inquiries (and the Inspector's reports are due imminently), and one of those applications is currently the subject of legal challenge.

Other applications to amend the Registers

4. In addition to dealing with applications to register new Village Greens, the County Council (as 'Commons Registration Authority') is also responsible for dealing with other kinds of applications to amend the Registers of Common Land and Town or Village Greens ("the Registers"). The Commons Act 2006 introduced a raft of previously unavailable measures to amend the Registers to allow for both new or historical events to be recorded and mistakes to be corrected. For example, in some cases the extent of the registered Common Land or Village Green was incorrectly recorded on the Registers (the majority of which were originally compiled under the Commons Registration Act 1965).

4.1 As with applications to register new Village Greens, these other applications also involve a process of public consultation and, ultimately, referral to the Regulation Committee Member Panel for determination.

4.2 There are currently four applications outstanding to amend the Registers, all of which relate to pieces of Common Land which, it is alleged, have either been incorrectly recorded or omitted altogether in error from the Registers. One of the applications involves 16 pieces of land, each of which requires careful assessment of historical documentation before any recommendation can be reached.

Recommendation

5**.** I RECOMMEND Members consider this report and note its content.

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

APPENDIX A:
Schedule of Commons Act 2006 applications

Outstanding Village Green applications (under section 15)

Description	Parish	Member(s)	Status
The Downs (VGA614)	Herne Bay	Mr. D. Watkins	Awaiting Inspector's report
Whitstable Beach (VGA658)	Whitstable	Mr. M. Dance	Awaiting Inspector's report
Land known as Two Fields (VGA681)	Westbere	Mr. A. Marsh	To be referred to Public Inquiry
Land at Hoplands Farm *(voluntary dedication)* (VGA682)	Hersden	Mr. A. Marsh	Awaiting information from developer
Land at Bybrook Road (VGA684)	Kennington	Mr. P. Bartlett	Under investigation
Land known as Salts Wood *(voluntary dedication)* (VGA685)	Loose	Mr. S. Webb	At consultation, deadline is 07/03/2022
Land at Boughton Green *(voluntary dedication)* (VGA686)	Boughton Monchelsea	Ms. L. Parfitt-Reid	At consultation, deadline is 07/03/2022
Land at Bunyards Farm (VGA687)	Aylesford	Mr. A. Kennedy	At consultation, deadline is 07/03/2022

Other outstanding applications to amend the Registers

Description	Parish	Member(s)	Status
Application to amend 16 pieces of Common Land in the Sevenoaks area (CAA19)	Seal and Sevenoaks Weald	Ms. M. McArthur Mr. R. Gough	Under investigation
Application to register missed Common Land at Greenway Forstal (CAA21)	Harrietsham	Ms. S. Prendergast	Consultation starts w/c 31/01/2022
Application to register missed Common Land at Preston Parade (CAA22)	Whitstable	Mr. M. Dance	Consultation starts w/c 31/01/2022
Application to register missed Common Land at Radfall Road (CAA23)	Blean	Mr. R. Thomas	Consultation starts w/c 31/01/2022

This page is intentionally left blank

Update on Planning Enforcement Issues Item 6

Report by Head of Planning Applications Group to the Regulation Committee on 27th January 2022.

Summary: Update for Members on planning enforcement matters.

Recommendation: To endorse the actions taken or contemplated on respective cases.

Unrestricted

Introduction

1. This report gives an insight into events, operational matters and recent activities of the County Planning Enforcement service. The period covered is from the previous Regulation Committee of 23rd September 2021, to date.

2. I am pleased to report that we have managed to maintain the service, to as near normal levels as possible, under continuing and testing coronavirus conditions. We have tactically focussed on the worst cases. At the same time, site visits are subject to the same covid risk management approach, as in the first wave of viral infections.

3. We are currently required by the Government to work from home, wherever possible. though a hybrid mix of home and office is likely to be the longer-term option. We remain flexible though in our outlook, since planning enforcement requires the ability to quickly switch focus in an agile way. Whatever the working styles, our key objective is still to optimise the use of our time and plan and programme our work with operational efficiency (starting from home as necessary). In other words, the right level of response, in the right places, at the right time.

4. As an extension to the above, we continue to develop our working ties with other regulatory partners, particularly on the larger cases. Those tend in any event to display a wider range of alleged unauthorised activities, falling within and outside of the planning system. We are working more closely with the police in particular and since the last Meeting, we have sought out every opportunity, to increase our capabilities.

Report Format

5. Our reporting to the Regulation Committee on planning enforcement matters comprises of two main parts.

6. Firstly, there is this ‘open’ report, summarising in general, our findings and observations relating to enforcement matters, for discussion. In addition, it

includes the nature of the alleged unauthorised activities and types of responses, incorporating as much as can be released on operational matters without prejudicing any action that the Council may wish to take, or indeed in relation to team actions with other regulatory bodies.

7. Secondly, there is a further 'closed' or exempt report (within Item 8 of these papers) containing restricted details of cases. These emphasise the work that has been achieved, in priority order, with the strategic level cases first (with a County Council interest / remit). These are followed by district referrals, including those where issues of jurisdiction remain and 'cross-over' work with partner bodies, and finally compliance issues at permitted sites.

8. This format (Item 8) provides a more in-depth analysis of alleged unauthorised sites. Its confidential nature is to protect the content and strategy of any proposed planning enforcement action that may be taken and any gathered evidence, which may subsequently be relied upon in court as part of any legal proceedings.

9. Data protection and security is paramount and a statutory duty of the County Council. It is important in case management terms but also concerning the personal safety and security of all the parties involved.

10. Hearing the details of cases in closed session allows for uninhibited discussion, in seeking Member endorsement, on our own or joint enforcement strategies with other regulatory authorities (who have their own need for confidentiality). In this context and especially with live cases, great care has to be taken in handling any related and sensitive information. Also, in striking the right balance against operational needs and the outcome being sought in the wider community interest.

11. Part of this balancing exercise is to provide a list, under paragraph 12 below, of the cases that will be discussed in the exempt report. This covers those sites currently active or requiring investigation. Those previously reported and inactive, remain on a 'holding / monitoring' database to be brought back to the Committee, should further activity occur, or as an update on site restoration and after-uses. A balance of attention is always sought between live activities and forward momentum on the restoration of affected sites.

12. Our current and immediate operational workload, qualified by remit and with resource priority, is as follows:

County Matter cases (complete, potential or forming a significant element)

01 **Raspberry Hill Park Farm**, Raspberry Hill Lane, Iwade, Sittingbourne

(and related multi-site investigations further afield).

02 **Spring Hill Farm,** Fordcombe, Sevenoaks.

03 **Water Lane, North of M20,** Thurnham, Maidstone.

04 **Hoads Wood Farm,** Bethersden, Ashford.

05 **Double-Quick Farm**, Lenham, Maidstone.

06 **Woodside East**, Nickley Wood, Shadoxhurst, Ashford

District referrals (or those district cases of potential interest)

07 **Ringwould Alpine Nursery**, Dover Road, Ringwould

08 **Fairfield Court Farm**, Brack Lane, Brookland, Romney Marsh.

09 **Chapel Lane**, Sissinghurst, Tunbridge Wells.

10 **Land off Maypole Lane**, Hoath, Canterbury

13 All alleged unauthorised cases received are triaged, researched and investigated to establish whether there is a statutory remit for the County Council. That is a pre-requisite for any formal action. Among the cases are those that may ultimately be handled by other authorities and agencies, without the need for our strategic input.

14 In order to efficiently identify potential strategic cases a comprehensive briefing is needed from the referring authority or agency, namely, the *'who, what, why, when, where and how'* of cases. Without such basic information of this type, an appropriate contribution or matters of jurisdiction are consequently difficult to decide upon.

15. We continue to seek ways for this essential flow of information to be improved, at the crucial first stage in any case. That includes, the need for an exact site location plan (to find the site but also to identify planning land interests) planning history and any current or previous district council and Environment Agency involvement. Also, aerial and ground photography (where available) and any known potential security issues. We are making it known and we would seek Members' support for requiring effective briefings from public authorities and agencies, before allowing under-specified cases to formally enter our work stream.

16. The aim of this approach is to avoid unnecessary and duplicate research, at the expense of operational efficiency and established priorities. Examples of good practice are those involving multi-agency actions, where available information is pooled, to the benefit of all participating parties.

17. A further workload area relates to compliance issues at permitted sites, mainly alleged breaches of planning conditions.

Permitted sites (compliance issues)

11 **East Kent Recycling**, Oare Creek, Faversham.

12 **Cobbs Wood Industrial Estate,** Ashford.

13 **Court Lodge Farm,** Horton Kirby.

14 **RS Skips,** Apex Business Park, Shorne.

15 **Flisher Energy, Fernfield Lane**, Hawkinge.

16 **Sall Haulage Ltd, Unit 2,** Katrina Wharf, Wharf Road, Gravesend.

17 **Cube Metals,** Unit A, Highfield Industrial Estate, Bradley Road, Folkestone

18 **Borough Green Sandpits,** Borough Green.

19 **Wrotham Quarry (Addington Sandpit)**, Addington, West Malling.

20 **The Old Tilmanstone Colliery,** Pike Road, Eythorne.

21 **Maidstone Grammar School,** Barton Road, Maidstone.

Meeting Enforcement Objectives

Overview

18. Planning enforcement is a high public profile function. It helps to underpin the Development Management Service within the Planning Applications Group. It further helps to protect the environment and public amenity. In addition, planning enforcement seeks to ensure a level playing field among the planning activities managed at county level and elsewhere.

19. Planning Enforcement is endorsed and given weight through planning policy and guidance at national and local plan level. The adopted Kent Minerals and Waste

Local Plan has included from the outset, an enforcement policy (DM22), which is now in a proposed and revised form, as part of the current review of the Plan. The Plan is currently out to public consultation with the following wording:

The County Council will carry out its planning enforcement functions within the terms of its own Enforcement Plan/Protocols (and any subsequent variations) and specifically for waste-related matters, in the light of the European Union Policies subsumed into law.

20. The policy assists and reinforces the drive for compliance, adding weight to any legal action (with the advantage of prior public support), which in turn is primarily required within the waste management field. Complementary controls and options also exist under other legislation, particularly the Environment Agency's permitting processes. Whenever practical and appropriate, enforcement bodies in this area have a common interest in joining forces. Initiatives of this type have been an integral feature of county planning enforcement for a considerable period of time, spanning many Regulation Committee cycles.

Seeking a solution

21. When we first receive cases, we make a considered assessment of the public interest and on the expediency to act. Usually this leads to a negotiated and proportionate settlement. The alleged breach is pointed out to the involved parties and how it might be rectified within a set timeframe. Our expectations of the alleged contraveners are clearly set out. They are also informed that robust action will be taken should they default or resume their contravening activities, should the need arise. This approach has proved a successful and cost-efficient style of enforcement, based on long experience and skill.

Workload focus

22. Since the last Regulation Committee Meeting in September 2021, the planning enforcement team has continued with its primary focus on County Matter cases. This workload involves significant research and analysis to anticipate and follow any material changes on site. The approach and strategies worked upon are regularly reviewed, especially in congruence with allied partners in multi-agency teams and in a response to alleged organised crime. That includes measured success in the form of a scaling down of activities in the most pressured cases, which in turn needs to be recorded for evidential purposes, and measures taken to secure and reinforce the progress made.

Synchronisation of powers

23. An enforcement theme, previously introduced to Members, has been the way in which Environment Agency Permits may be issued to a waste management activity, in the absence of planning permission and often at unsuitable sites in

planning terms. These pre-empt the need for planning permission, which can often lead to intractable problems, even before district and county planning enforcement teams become aware of the activities.

24. Government legislation would be welcome and required, to ensure formal synchronisation again, of the Environment Agency and County Planning Authorities, representing the two major waste enforcement bodies. Representations to promote such changes through Government, are gaining ground, with networks of interested parties (peer groups and associations) coalescing around the issue.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

25. In addition to our general visits to sites, we also undertake monitoring visits on permitted sites. They provide useful compliance checks against each operational activity and an early warning of any alleged and developing planning contraventions. Those within the statutory monitoring charging scheme are currently restricted in favour of other work priorities, although investigation of alleged breaches that are drawn to the Council's attention have continued to be investigated. Alleged planning contraventions at permitted sites are being challenged with additional support from an outside planning consultancy firm.

Resolved or mainly resolved cases requiring monitoring

26. 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. Under normal circumstances, 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. For the moment, this initiative has also been reduced to allow a diversion of resources to more immediate and pressing duties.

Conclusion

27. Notwithstanding a further wave of coronavirus infections, alleged waste-related planning contraventions, which are of particular concern, have continued throughout the epidemic. The response has been equally determined and consistent, even though the workplace and workstyles have changed, quite radically in parts. The Government have currently mandated us to work from home if at all possible. Notwithstanding this disruption, our focus on the more demanding cases and resilience, in the face of government restrictions remains intact. A credible threat and deterrent have been maintained, within available resources. Those in turn have been enhanced and expanded through collaborative working and support from other authorities and agencies. Indeed,

there is often an operational necessity, in joining forces on cases (for security, resourcing and evidential purposes) and especially where cases concern alleged organised crime, which is now more common.

Recommendation

28. 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.	

This page is intentionally left blank

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

Document is Restricted

This page is intentionally left blank