

**REGULATION COMMITTEE**

**Tuesday, 30th January, 2024**

**10.00 am**

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





## AGENDA

### REGULATION COMMITTEE

**Tuesday, 30th January, 2024, at 10.00 am**      Ask for:      **Hayley Savage**  
**Council Chamber, Sessions House, County**      Telephone:      **03000 414286**  
**Hall, Maidstone**

#### **Membership (15)**

Conservative (10):      Mr S C Manion      (Chairman),      Mrs S Hudson      (Vice-Chairman),  
Mr D Beaney,      Mr T Bond,      Miss S J Carey,      Mr P Cole,  
Mr M C Dance, Mr J M Ozog, Mrs L Parfitt-Reid and Mr H Rayner

Labour (2):      Mr B H Lewis and Ms J Meade

Liberal Democrat (1):      Mr I S Chittenden

Green and  
Independent (2):      Mr M Baldock and Peter Harman

#### **UNRESTRICTED ITEMS**

*(During these items the meeting is likely to be open to the public)*

1.      Membership  
        To note that Miss Susan Carey has joined the committee.
2.      Apologies and Substitutes
3.      Declarations of Interests by Members in items on the Agenda for this meeting.
4.      Minutes (Pages 1 - 28)
  - (a) Committee: 17 October 2023
  - (b) Member Panel: 15 September 2023
  - (c) Member Panel: 20 September 2023
  - (d) Member Panel: 24 November 2023
5.      Home to School Transport Appeals Update (Pages 29 - 32)

6. Update from the Public Rights of Way and Access Service - Common Land and Village Greens (Pages 33 - 38)
7. Update on Planning Enforcement Issues (Pages 39 - 46)
8. Other Items which the Chairman decides are Urgent

**Motion to exclude the press and public for exempt business**

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 press and public)*

9. Update on Planning Enforcement Cases (Pages 47 - 74)

Benjamin Watts  
General Counsel  
03000 416814

**Monday, 22 January 2024**

*Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.*

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## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 17 October 2023.

PRESENT: Mr S C Manion (Chairman) Mr M Baldock, Mr T Bond, Mr I S Chittenden, Mr P Cole, Mr M C Dance, Peter Harman, Mr J M Ozog, Mrs L Parfitt-Reid, Mr H Rayner, Mr T L Shonk and Ms S Hamilton

IN ATTENDANCE: The Team Leader - Planning Enforcement, Mr G Rusling (Public Rights of Way & Access Service Manager), Mrs S Thompson (Head of Planning Applications), Mrs L Wilkins (Definitive Map Team Leader), The Senior Planning Enforcement Officer and Ms H Savage (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### **41. Membership**

*(Item 1)*

The Chairman advised Members that Mr Bond, Mr Harman and Ms Meade had joined the committee.

RESOLVED that the membership be noted.

#### **42. Apologies and Substitutes**

*(Item 2)*

Apologies were received from Mr Beaney, Mrs Hudson, Mr Lewis, and Ms Meade. Mrs Hamilton was attending as substitute for Mrs Hudson.

#### **43. Declarations of Interests by Members in items on the Agenda for this meeting.**

*(Item 3)*

There were no declarations of interest.

#### **44. Minutes of the meeting held on 26 April 2023**

*(Item 4)*

RESOLVED that the minutes of the Committee meeting on 26 April 2023 are correctly recorded and that they be signed by the Chairman.

#### **45. Update from the Public Rights of Way and Access Service**

*(Item 5)*

1. The Definitive Map Team Leader introduced the report and provided an update in respect of applications to amend the Definitive Map and Statement (DMS). During the period April 2022 to March 2023 14 Section 53 applications were

determined, 6 orders were made and 2 were confirmed, and 17 cases were currently under investigation. The backlog included 82 unallocated applications and on average 10-12 applications were investigated each year which meant a backlog of about 8 years. Four cases were currently with the Planning Inspectorate.

2. Applications were also processed under the Highways Act to divert or extinguish a right of way and during the period April 2022 to March 2023 15 public path orders had been confirmed and there were 43 unallocated applications which meant a backlog of about 2.5 to 3 years. One case was currently with the Planning Inspectorate.
3. The Definitive Map Team Leader said the team processed applications under the Town and Country Planning Act on behalf of all the district councils (except Maidstone and Thanet) through a Service Level Agreement. Applications were also considered under the council's own planning function for example schools and minerals extraction. During the period April 2022 to March 2023 12 public path orders had been confirmed and there were 39 cases where the order had been made and confirmed but was awaiting certification. One case was with the Planning Inspectorate.
4. In relation to deposits where a landowner could protect their land from future Section 53 applications and village green applications The Definitive Map Team Leader said during the period April 2022 to March 2023 25 deposits had been received.
5. The Definitive Map team provided local authority search responses in respect of public rights of way, village green and common land. Temporary Traffic Regulation Orders were processed on behalf of the Council, statutory undertakers, landowners, and developers.
6. The Definitive Map team Leader highlighted that the backlogs reflected the complex and lengthy procedures that were required and when objections were received applications were submitted to the Planning Inspectorate who themselves had a lengthy backlog.
7. Within the last year the team had received 1 direction from the Secretary of State for a Section 53 application to be determined within 12 months. The Definitive Team Leader said she expected to see more as the backlog continued to grow.
8. The Definitive Map Team Leader referred to the Deregulation Act 2015 and said the provisions for this to come into force was still awaited, however task groups had been set up to look at the reforms package.
9. The Definitive Map Team Leader referred to the 2026 cut off date where all unrecorded rights of way created before 1949 were to be extinguished immediately after 1 January 2026 and said a statement issued in March 2023 by the Department for Environment, Food & Rural Affairs (DEFRA) determined that the cutoff date would be brought into force. However, due to the delay caused by the pandemic the cutoff date had been extended to 1<sup>st</sup> January 2031.

An increased number of applications, based on historical use, were therefore expected.

10. The Definitive Map Team Leader set out new guidance that had recently been issued as of August 2023 setting out government policy on changes to public rights of way.
11. Mr Baldock asked about the amount charged to developers for Public Rights of Way (PROW) diversions and the Public Rights of Way and Access Service Manager said this was in the region of £2,000 to £3,000 and was strictly regulated and reviewed in terms of the cost of the Council's service provision.
12. Mr Cole asked about Section 53 applications and appeals to the Secretary of State. The Definitive Map Team Leader said the Council provided information regarding priorities and backlog to the Secretary of State and there was not a standard length of time issued for determination.
13. Mr Bond asked about staff resource and the Public Rights of Way and Access Service Manager said there were 5.3 FTE (full-time equivalent) members of staff within the team and approximately 1.2 FTE were currently dealing with 17 Section 53 applications. He said Section 53 applications were not chargeable unlike public path orders and Town and Country Planning Act orders. Benchmarking across the Southeast had shown that the Council was ahead of other local authorities in terms of productivity.
14. Mr Shonk asked about the pressure of development on PROW applications and the Public Rights of Way and Access Service Manager said this put pressure on the team in terms of recording rights of way and the work carried out under the Service Level Agreements with 10 of the 13 planning authorities within Kent.
15. Mr Baldock asked about the King Charles III England Coast Path (KCIIIIECP) and the Public Rights of Way and Access Service Manager said this had not had an impact on the Definitive Map Team as it was led by Natural England on behalf of DEFRA. However, the team had been heavily involved and progress had been good. The costs of the Council's involvement were met through Natural England and grants.

RESOLVED that the report be noted.

#### **46. Update on Planning Enforcement Issues** (Item 6)

1. The Head of Planning Applications introduced the report which covered the work of the Planning Enforcement Team since 26 April 2023.
2. The Head of Planning Applications said the team remained very busy and there had been a notable development in alleged organised waste crime activity spreading across a number of sites which had mixed planning uses and involved a range of regulators. The team was continuing to work well with other regulatory bodies including the Environment Agency, district and borough councils, His Majesty's Revenue & Customs (HMRC), Natural England and Kent Police. The Head of Planning Applications said the joint approach was a

good use of limited resources, provided a united front, enabled evidence sharing, the sharing of monitoring responsibilities, and provided a range of regulatory tools and prosecution options.

3. The Team continued to triage and research complaints to identify whether there was a KCC interest and a lead role for the County Council. Where sites were resolved they continued to be monitored and, where appropriate, brought back for investigation.
4. The Head of Planning Applications referred to the Environment Agency's permitting issue (where sites had an EA permit but not planning permission) and, working with the EA, early warning systems had been put in place so that the team were aware of potential breaches much earlier than before. The EA had revoked the permit on several cases (where planning had not been permitted) which activated their site clearance responsibility.

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

#### **47. Other Items which the Chairman decides are Urgent**

*(Item 7)*

The Chairman advised Members that a Regulation Committee Training Session for Members would take place on Monday 4 December 2023.

#### **48. Update on Planning Enforcement Cases**

*(Item 8)*

1. The Head of Planning Applications introduced the report which covered the work of the Planning Enforcement Team since 26 April 2023.
2. Members discussed the complexity of some of the cases and the enforcement action available to different agencies, and collectively, to combat the planning enforcement pressures faced by the Council. The committee agreed that the Chair would speak to the Chair of the Kent and Medway Police and Crime Panel regarding the possible attendance of the Police and Crime Commissioner at a future meeting of the Regulation Committee.
3. The Planning Enforcement Team Leader gave an update on unauthorised (or part unauthorised) planning enforcement matters setting out actions taken or contemplated at Hoads Wood, Bethersden, Ashford; Ancient Woodland Adjacent to Knoxfield Caravan Site, Dartford; Oaktree Farm, London Road, Halstead; Warden Point/Third Avenue, Eastchurch, Isle of Sheppey; Raspberry Hill Park Farm, Iwade; Water Lane, Thurnham; Woodside East, Shadoxhurst; Land off Maypole Lane, Hoath, Canterbury; Manor Farm, Willow Lane, Paddock Wood; Knowle Farm, Malling Road, Teston; Cobbs Wood Industrial Estate, Ashford; Old Tilmanstone Colliery, Pike Road, Eythorne; Cube Metals, Unit A, Highfield Industrial Estate, Bradley Road, Folkestone; R S Skips, Apex Business Park, East Kent Recycling, Oare Creek, Faversham; Borough Green Sandpits, Platt; Wrotham Quarry (Addington Sandpit), Addington, West Malling; H & H Celcon, Ightham.



4. The Head of Planning Applications amended her recommendations relating to Raspberry Hill Park Farm at paragraph 64 of the report and Cube Metals, Folkestone, at paragraph 126 of the report and this was unanimously agreed.

RESOLVED that:

- a. subject to paragraph 4 above the enforcement strategies outlined in paragraphs 6 to 155 of the report be noted and endorsed; and
- b. The Chair would speak to the Chair of the Kent and Medway Police and Crime Panel regarding the possible attendance of the Police and Crime Commissioner at a future meeting of the Regulation Committee.

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## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Darent Room, Sessions House, County Hall, Maidstone on Friday, 15 September 2023.

PRESENT: Mr S C Manion (Chairman), Mr M Baldock, Mr I S Chittenden, Mr M C Dance and Mr H Rayner

IN ATTENDANCE: Ms M McNeir (Public Rights Of Way and Commons Registration Officer), Mr G Rusling (Public Rights of Way & Access Service Manager), Mrs K Goldsmith (Research Officer - Overview and Scrutiny), Ms H Savage (Democratic Services Officer) and Ms S Bonser (Senior Solicitor)

### UNRESTRICTED ITEMS

**6. Application to register land known as The Downs at Herne Bay as a new Town or Village Green**  
*(Item 3)*

*This item was taken after Item 4 and before Item 6.*

1. The Public Rights of Way and Commons Registration Officer introduced the report and said that the Council had received an application to register land known as The Downs at Herne Bay as a new Town or Village Green from Mr P. Rose. She explained that at the time of the application Mr Rose was a local resident in Herne Bay but had since moved to another part of the country. The application had been made under Section 15 of the Commons Act 2006 which enabled any person to apply to a Commons Registration Authority to register land as a village green where it could be shown that a significant number of inhabitants had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
2. The Public Rights of Way and Commons Registration Officer explained that the matter was considered at a Regulation Committee Member Panel meeting on 13 June 2011 at which the matter was referred to a Public Inquiry for further consideration. A Barrister ("the First Inspector") was instructed to hold a public inquiry which took place in 2011/12 who advised that the site be registered as a new village green except for two small areas. KCC Officers had concerns about this approach and took a second opinion which, along with evolving case law, resulted in a long delay and the re-opening of the Public Inquiry.
3. The Public Rights of Way and Commons Registration Officer set out the officers' concerns in respect of the First Inspector's report, the findings of the Second Inspector's report and their considerations and conclusions in relation to the legal tests that were required to be met for the application to be successful.

4. The Public Rights of Way and Commons Registration Officer said officers supported the views set out in the Second Inspector's Report and recommended, for the reasons set out in the Second Inspector's report, that the application to register the land as a new Village Green should not be accepted.
5. Mr Baldock asked, in relation to Section 22(2) of the Coast Protection Act 1949, which provides a Coastal Protection Authority with a power to 'lay out public parks, pleasure grounds or recreation grounds' over land held by it for coast protection purposes, whether there was any evidence that any powers had been enacted. The Public Rights of Way and Commons Registration Officer said Canterbury City Council had made the land available for recreational purposes and therefore those using it for such were not trespassing.
6. Mr Rayner proposed, and Mr Chittenden seconded, the recommendation set out at paragraph 112 in the report.
7. The Chair put the motion set out in paragraph 6 to the vote and it was agreed unanimously.
8. RESOLVED that, for reasons set out in the Second Inspector's report dated 7 April 2022, that the Applicant be informed that the application to register the land known as The Downs at Herne Bay as a new Village Green has not been accepted.

**7. Application to register land known as Whitstable Beach as a new Town or Village Green**  
*(Item 4)*

*This item was taken after Item 5 and before Item 3.*

*Ms Sarah Woolnough of Furley Page Solicitors (representing the Whitstable Oyster Fishery Company) was in attendance for this item.*

1. The Public Rights of Way and Commons Registration Officer introduced the report and said that the Council had received an application to register land known as Whitstable Beach as a new Town or Village Green from Mr P. McNally on behalf of the Whitstable Beach Campaign. The application had been made under Section 15 of the Commons Act 2006 which enabled any person to apply to a Commons Registration Authority to register land as a village green where it can be shown that a significant number of inhabitants had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
2. The Public Rights of Way and Commons Registration Officer explained the matter had been going on for some time and was considered at a Regulation Committee Member Panel meeting on 19 May 2015 at which it was decided that the matter be referred to a Public Inquiry. A Barrister was

subsequently instructed to hold a Public Inquiry and the report was published on 7 April 2022.

3. The Public Rights of Way and Commons Registration Officer explained that the Application Site had previously been the subject of two applications for registration as a Village Green, both made under section 13 of the Commons Registration Act 1965 (which was the predecessor to section 15 of the Commons Act 2006), and these had been refused.
4. The Public Rights of Way and Commons Registration Officer, as set out in the report, explained the legal tests the Council must consider in determining the application and the outcome of each test based on evidence received and collated. She said for the application to be successful every test had to be met.
5. The Public Rights of Way and Commons Registration Officer discussed the Inspector's finding and explained that although Members were not bound by the Inspector's Report, officers believed the Inspector's approach was correct. Officers agreed with the Inspector's findings that the legal tests had not been met and recommended to Members, for the reasons set out in the Inspector's report, that the application should not be accepted.
6. Mr Dance informed the Panel that he was the Local Member for this application and confirmed he had taken no part in any discussions of the application and was able to approach the determination of the application with a fresh mind.
7. The Chair referred to an email from the Applicant, Mr McNally, dated 13 September 2023, which was circulated to Panel Members prior to the meeting.
8. The Chair put the recommendation set out at paragraph 117 in the report to the vote and it was agreed by the majority.
9. RESOLVED that, for reasons set out in the Inspector's report dated 7<sup>th</sup> April 2022, that the applicant be informed that the application to register the land known as Whitstable Beach as a new Village Green has not been accepted.

**8. Application to register land known as Bunyards Farm at Allington as a new Town or Village Green**  
(Item 5)

*This Item was taken after Item 2 and before Item 4.*

*Mr Duncan Edwards, Ms Alison Bundock, Ms Lynne Lawrence, Mr Chris Passmore, Mr Tom Cannon, and Ms Katie Rowe (on behalf of BDW Trading Ltd) were in attendance for this item.*

1. The Public Rights of Way and Commons Registration Officer introduced the report and said that the Council had received an application to register an area of land at Bunyards Farm at Allington as a new Town or Village Green

from Mr C Passmore, Mr J Willis, Mr T Wilkinson, Cllr P Harper, Mr T Walker, and Mr D Edwards. The application had been made under Section 15 of the Commons Act 2006 which enabled any person to apply to a Commons Registration Authority to register land as a village green where it can be shown that a significant number of inhabitants had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.

2. The Public Rights of Way and Commons Registration Officer set out the location of the site and informed Members that the site was subject to a planning application which was under consideration by the local authority. She said this had no relevance on the decision being made in relation to the village green application and the two were separate legal processes.
3. The Public Rights of Way and Commons Registration Officer set out the evidence that had been submitted in support of the application and the consultations that had been carried out. She said that objection to the Application had been received from DAC Beachcroft LLP on behalf of the Landowners and BDW Trading Ltd. She explained that BDW Trading Ltd had a legal interest in the land in the form of an option to purchase and set out the reasons why BDW Trading Ltd believed the application failed to meet the requirements.
4. The Public Rights of Way and Commons Registration Officer, as set out in the report, explained the legal tests the Council must consider in determining the application, and the outcome of each test based on evidence received and collated. She said that every single test had to be met for the application to be successful. She said there were serious disputes within the evidence which officers had not been able to reconcile, and the officers' recommendation was for a Public Inquiry to be held to enable further consideration of the evidence and oral testimony to be received from witnesses.
5. Mr Duncan Edwards (Applicant) provided a statement in support of the application. He said an ecological group had been working to develop a nature route from Allington to Barming and he had been involved in drawing up the facts about the land, during which he had collected 60 witness statements. Mr Edwards highlighted key points including that fences had deteriorated over the last 20 years, and they were not sufficient to contain livestock. He said at no point did the owner take action to exclude residents and he believed hay making could be done alongside pastimes.
6. Ms Alison Bundock, a local resident, provided a statement in support of the application. She said she had lived in Beaver Road since June 2001 and had accessed the land as an extension of the open space. She said the land had been used by her family and friends for den building, playing in woods and, since 2011, for dog walking.
7. Ms Lynne Lawrence provided a statement in support of the application on behalf of a local resident who lived in Cornwall Close. She said local residents had assumed the right to walk on the land as there was not any private signage to advise otherwise or anyone maintaining the land. She

said the Importance of the land being registered as a village green could not be understated.

8. Ms Lynne Lawrence, a local resident, provided her own statement in support of the application. Ms Lawrence had lived in Cornwall Close since the spring of 2001 and had been attracted to the site due to its open access and fields nearby and used it for dog walking. She said many people used the fields for various family activities including nature spotting. She had never been told not to use the site and the fencing had deteriorated. She said the area had depth of meaning to the people in the area.
9. Mr Chris Passmore (Applicant) provided a statement in support of the application. He said he had been the chief evidence collector and had worked logically around Allington Way to establish which residents had accessed the land before making the application. He said he had emphasised to residents when asking for their submissions that it was a legal process that could be challenged. He said more evidence forms could be submitted if required. He said residents who had accessed the land since the 1980s had not been told to leave by the landowner.
10. Mr Tom Cannon (Local Member) provided a statement in support of the application. He said more evidence could have been gathered and a significant number of residents had and were using the site. He referred to the google image of an access point included in the report and said that the access points may have changed over the years.
11. Ms Katie Rowe, on behalf of BDW Trading Ltd provided a statement in objection to the application. She said that BDW Trading Ltd and the landowners opposed the application and disputed the claims that the land had been used as of right in lawful sports and pastimes for a period of at least 20 years. BDW Trading Ltd and the landowners supported the officers' recommendation that a Public Inquiry be taken so that all the evidence could be assessed.
12. Mr Baldock said he supported the recommendation of a Public Inquiry so that further evidence for the whole period could be obtained in relation to boundaries and fencing, mutual use of the land for horses and recreation, and examples of recreation use.
13. Mr Baldock proposed, and Mr Dance seconded the recommendation in the report.
14. Mr Chittenden asked for clarification regarding the planning application on the land and the Public Rights of Way and Commons Registration Officer confirmed if planning consent was granted there was nothing to stop the developer from going ahead, however, this would not be in the developer's interests in the event that the village green application was accepted at a future date.
15. The Chairman put the motion set out in paragraph 64 of the report to the vote and it was agreed unanimously.

16. RESOLVED that a Public Inquiry be held into the case to clarify the issues.

9. **Other items which the Chairman decides are urgent**  
*(Item 6)*

There were no urgent items.



## KENT COUNTY COUNCIL

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### 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 Wednesday, 20 September 2023.

PRESENT: Mr S C Manion (Chairman), Mr M Baldock, Mr I S Chittenden, Mr M C Dance and Mr H Rayner

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

### UNRESTRICTED ITEMS

**10. Application to register land at Bybrook Road/The Pasture at Kennington as a new Town or Village Green**  
*(Item 3)*

*Councillor Chris Morley (Kennington Community Council), Councillor Diccon Spain (Kennington Community Council), Mr Daniel Kozelko (Barrister), Ms Sibel Ucur and Mr Paul Bartlett were in attendance for this item.*

1. The Public Rights of Way and Commons Registration Officer introduced the report and said that the Council had received an application to register an area of land at Bybrook Road at Kennington as a new Town or Village Green from Kennington Community Council. The application had been made under Section 15 of the Commons Act 2006 which enabled any person to apply to a Commons Registration Authority to register land as a village green where it can be shown that a significant number of inhabitants had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
2. The Public Rights of Way and Commons Registration Officer said the necessary consultations had been undertaken and evidence from residents in support of the application had been received. As set out in the report, she explained the legal tests the Council must consider in determining the application, and the outcome of each test based on evidence received and collated. She said for the application to be successful every test had to be met.
3. The Public Rights of Way and Commons Registration Officer discussed the evidence received in conjunction with each of the tests to be considered, but concluded, for the reasons set out in the report and explained to the Panel, that the legal tests had not been met and recommended that the application should not be accepted. She advised Panel Members that if they

considered that there were serious disputes of fact, the matter could be referred to a Public Inquiry.

4. Councillor Chris Morley (Applicant on behalf of Kennington Community Council) provided a statement in support of the application. He said the application had been submitted in the summer of 2020 during the first stage of the Covid-19 pandemic where the ability to reach out to residents to gain their views was limited. He said Ashford Borough Council had maintained the land from time to time since 1967 and the landowner had not contributed to the cost. He said the land was registered as an Asset of Community Value provided for under the Localism Act 2011 approved by Ashford Borough Council.
5. Councillor Diccon Spain (Applicant on behalf of Kennington Community Council) provided a statement in support of the application. He referred to Bockhanger, the defined neighbourhood area used within the application, and said the area was huge compared to the small area of land in question and he would expect this to affect the amount of evidence obtained. He said the age of children riding bikes was not material and the evidence submitted in respect of this pastime was acceptable. Councillor Spain highlighted that the land had been used for half a century since 1967 by residents living close to it.
6. Mr Daniel Kozelko (on behalf of the Landowner) provided a statement in objection to the application. He said he broadly agreed with the officers' report that the land should not be registered. He referred to the test that considered whether the land had been used by a 'significant number of inhabitants of a particular locality, or a neighbourhood within a locality' and said this had not been met due to the small numbers involved and insufficient evidence regarding which areas of the land were being used. He said the number of user evidence questionnaires provided in support of the application was low at just 22 and that the evidence provided was insufficient. He went on to say that no photos had been provided, and satellite photos did not show people using the land.
7. Mr Bartlett (Local Member) addressed the Panel in support of the application. He provided an explanation of the area in terms of dog walking as a lawful sport and pastime and objected to the view taken in the report that the size of the site limited this activity. Mr Bartlett said he and other local residents had big dogs and had regularly walked them on the land which he said was plenty large enough for dogs to be exercised. Mr Bartlett suggested the matter be referred to a Public Inquiry.
8. Mr Baldock said there was an argument for an alternative neighbourhood to be considered and commented, with regards to photo evidence, that what could reasonably be expected should be considered. He said sporadic events should not be dismissed as they were still usage and what community spaces were for.
9. Mr Rayner proposed, and Mr Chittenden seconded the recommendation at paragraph 61 in the report.

10. The Chair put the recommendation set out in the report to the vote and it was agreed by the majority.
11. RESOLVED that the Applicant be informed that the application to register the land at Bybrook Road/The Pasture at Kennington as a Town or Village Green has not been accepted.

**11. Application to register land at Quantock Drive at Ashford as a new Town or Village Green**  
*(Item 4)*

*Mr Paul Bartlett, Councillor Andrew Buchanan and Mrs Pauline Lowman were in attendance for this item.*

1. The Public Rights of Way and Commons Registration Officer introduced the report and said that the Council had received an application to register an area of land at Quantock Drive at Ashford as a new Town or Village Green from Mr P Bartlett in his capacity as the Local Member and on behalf of the community that he represents. The application had been made under Section 15 of the Commons Act 2006 which enabled any person to apply to a Commons Registration Authority to register land as a village green where it can be shown that a significant number of inhabitants had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
2. The Public Rights of Way and Commons Registration Officer provided an overview of the land and explained the legal tests the Council must consider in determining the application, and the criteria and outcome of each test. She said the necessary consultations had been undertaken and evidence from residents in support of the application had been received.
3. The Public Rights of Way and Commons Registration Officer explained that the land was sold at auction within days of the application being made. She said the landowner had not engaged with officers regarding the application and different steps had been taken to contact them, consultation notices had been placed on the land, and a press article appeared on Kent Online. The Public Rights of Way and Commons Registration Officer clarified that the lack of objection did not affect the outcome of the application and for the application to be successful the legal tests needed to be met.
4. Having set out those tests in connection with the evidence received in support of the application, the Public Rights of Way and Commons Registration Officer recommended to Members that, for the reasons set out in the report and explained to the Panel, the legal tests had been met and the applicant should be advised that the application has been accepted (and the land be registered as a Village Green).
5. Mr Baldock asked for clarification regarding the boundary of the land where it appeared an area had been missed off and the Public Rights of Way and Commons Registration Officer confirmed this was the plan submitted by the applicant and it was not possible to change the boundaries.

6. Mr Chittenden asked whether photos had been provided in evidence of the use of the land and the Public Rights of Way and Commons Registration Officer confirmed they had.
  7. Mr Paul Bartlett (Applicant) addressed the Panel in support of the application. He said he felt sufficient publicity had taken place to make the landowner aware of the application including an interview on Radio Kent. Mr Bartlett clarified that the boundary line on the application plan had been made freehand. He said the land was the only Asset of Community Value on the estate and served as a meeting place including public meetings in relation to the application. He said the application was timely as the Borough Council had called for sites for the next local plan and it was vital the land be registered to avoid the risk of development on the land.
  8. Councillor Andrew Buchanan addressed the Panel in support of the application. He said the Quantock Estate was almost a village in itself due to its position between main roads. He said residents who had lived there since the estate was built in the 1960s had been led to believe that the land was part of the landscaping scheme and for as long as they could remember had been maintained by the Council.
  9. Mrs Pauline Lowman, a local resident, addressed the Panel in support of the application. She said the land had been used daily by dog walkers, was a meeting place for local residents and had always been a valued space especially during the Covid-19 pandemic lockdown. She said the land had many trees with preservation orders. She said she had lived opposite the land for 52 years and it had been used by her children when they were young and was now enjoyed by her grandchildren.
  10. Mr Rayner proposed, and Mr Dance seconded, the recommendation in the report.
  11. Mr Baldock asked whether a second application was possible for the land not included within the boundary on the Applicant's plan and the Public Rights of Way and Commons Registration Officer advised that, in theory, this could be done provided that there was evidence of use available specific to those small pieces of land.
  12. The Chair put the motion set out in paragraph 46 of the report to the vote and it was agreed unanimously.
  13. RESOLVED that the applicant be informed that the application to register land at Quantock Drive at Ashford as a new Town or Village Green has been accepted, and that the land subject to the application be registered as a Village Green.
12. **Application to register land at West Cliff Bank at Whitstable as a new Town or Village Green**  
(Item 5)

*Mr Mark Dance (Local Member) and Ms Rebecca Booth (Canterbury City Council) were in attendance for this item.*

1. Mr Mark Dance informed the Panel that he was in attendance as the Local Member for this application and was therefore not a Member of the Panel for this item and would not form part of the decision making.
2. The Public Rights of Way and Commons Registration Officer introduced the report and said that the Council had received an application to register an area of land at West Cliff Bank at Whitstable as a new Town or Village Green from Canterbury City Council. The application had been made under Section 15(8) of the Commons Act 2006 which enabled the owner of any land to apply to voluntarily register land as a new Village Green without having to meet the qualifying criteria.
3. The Public Rights of Way and Commons Registration Officer provided an overview of the land and explained that, in respect of voluntary applications, there was no need for any legal tests to be met and the relevant criteria for the voluntary registration of land as a new Town or Village Green under section 15(8) of the Commons Act 2006 required only that the County Council was satisfied that the land was owned by the applicant.
4. The Public Rights of Way and Commons Registration Officer said the Land Registry search confirmed that Canterbury City Council was the owner of the land and recommended to Members that the applicant should be advised that the application has been accepted.
5. Mr Baldock asked if Canterbury City Council would have an obligation to maintain the land if they became the registered landowner, and the Public Rights of Way and Commons Registration Officer said there was no legislation specific to Village Greens that required landowners to maintain land, but they did have a responsibility under the Occupiers Liability Acts to ensure land was safe to use.
6. Ms Rebecca Booth (Applicant) on behalf of the Friends of West Cliff Bank Group made the following statement:

*“We are delighted that West Cliff Bank is being considered today for village green status. The Friends of West Cliff Bank have enjoyed huge support from local residents, environmental organisations and Canterbury City Council since this project started in 2021. We were delighted in the Autumn of 2021 to have unanimous agreement from Canterbury City Council members that this tranche of land between West Cliff and the Golf Course in the town centre of Whitstable should be put forward to become a village green.*

*The land had been largely untended for ten years and is now a thriving habitat for plants and animals, a precious biodiversity that the Friends group has been keen to support and maintain whilst opening up this green space for the enjoyment of local residents. Getting this balance right is always difficult but the Friends group has engaged many environmental and wildlife organisations to get advice including the Butterfly Conservation Trust, Kent*

*Reptile and Amphibian Group, Kent Field Club, Natural Whitstable, Kent Tree and Pond Wardens and Jon Ford Environmental Consultancy. We have benefitted from comprehensive surveys and received detailed reports which have confirmed what we already knew that West Cliff Bank provides a rich and varied habitat for hundreds of native species of plants and animals. We are using this information to develop a management plan which will enable us to protect the flora and fauna on West Cliff Bank going forward.*

*Local residents have engaged with the Friends of West Cliff Bank from the beginning, with around 160 people joining our group. We have a core committee of 8 people who meet regularly to manage our plans and discuss future strategy. In September 2022, we started a monthly volunteer action morning which takes place on the first Saturday of the month and is open to all members of our group. Armed with tools donated by Canterbury City Council, we have concentrated on creating a single pathway across the scrub from one entry point on West Cliff to the other on the golf course causeway. The path has been cut back carefully to create minimum impact. Along the way, working with the Butterfly Conservation Trust, we have created a butterfly bed planted with sorrel and teasel to attract the elusive Fiery Clearwing and form part of a corridor for this rare moth across Kent.*

*Before our volunteer days, it was almost impossible to enter the land but now we have a clear route through enabling access for local people. Once West Cliff Bank has the village green status it deserves, the Friends group will be able to start fundraising to put in steps on the slopes, working with Canterbury City Council to make the land fully accessible to everyone so that the people of Whitstable can really benefit from this beautiful green corner of Whitstable.”*

7. Mr Dance (Local Member) addressed the Panel in support of the application. He said he had visited the site and fully supported the application.
8. Mr Rayner proposed, and Mr Baldock seconded, the recommendation in the report.
9. The Chair put the motion set out in paragraph 19 of the report to the vote and it was agreed unanimously.
10. RESOLVED that the applicant be informed that the application to register land at West Cliff bank at Whitstable as a new Town or Village Green has been accepted, and that the land subject to the application be registered as a Village Green.

**13. Application to register land at Preston Parade at Whitstable as Common Land**  
(Item 6)

1. The Public Rights of Way and Commons Registration Officer introduced the report and said that the Council had received an application to register an area of land at Preston Parade at Whitstable as Common land from the

Open Spaces Society. The application had been made under Paragraph 4 of Schedule 2 of the Commons Act 2006 which allowed for anyone to apply to register land as Common Land.

2. The Public Rights of Way and Commons Registration Officer explained the application had been briefly considered at the full Regulation Committee on 24 January 2023 where it was agreed that a decision on the matter should be deferred to enable the provision of further information.
3. The Public Rights of Way and Commons Registration Officer provided an overview of the land and explained the relevant legal tests, under Paragraph 4 of Schedule 2 of the Commons Act 2006, that the Council must consider in determining the application.
4. The Public Rights of Way and Commons Registration Officer explained that following exchanges of representations with the landowner/objector, the Applicant agreed that the land subject to the application was not capable of registration as Common Land and had requested that the application be withdrawn.
5. Mr Dance informed the Panel that he was the Local Member for this application and confirmed he had taken no part in any discussions of the application and was able to approach the determination of the application with a fresh mind.
6. Mr Baldock declared an interest in that he was a member of the Open Spaces Society.
7. Mr Rayner proposed, and Mr Dance seconded, the recommendation in the report.
8. The Chair put the motion set out in paragraph 20 of the report to the vote and it was agreed by majority.
9. RESOLVED that the County Council agrees to the Applicant's request to withdraw the application to register land at Preston Parade at Whitstable as Common Land.

**14. Other items which the Chairman decides are urgent**  
*(Item 7)*

There were no urgent items.

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## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Bobbing Village Hall, Sheppey Way, Bobbing, Sittingbourne ME9 8PL on Friday, 24 November 2023.

PRESENT: Mrs S Hudson (Vice-Chairman in the Chair), Mr P Cole, Mr M C Dance, Peter Harman and Mrs L Parfitt-Reid

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

### UNRESTRICTED ITEMS

15. **Application to divert part of Public Footpath ZR681 from the foot crossing to a new route parallel to the northern platform at Teynham in the Borough of Swale**  
(Item 3)

*Mr Damian Hajnus (Network Rail), Rich Lehmann (Local Member), Mr David Lindop, Mr Steve Obeirne and Mr Paul Townson were in attendance for this item.*

1. The Members of the Panel visited the site of the proposed diversion prior to the meeting. This visit was also attended by Rich Lehmann (Local Member), Ms Gemma Kent from Network Rail (the Applicant) and approximately 8 members of the public. Panel Members inspected the crossing point and observed the visibility lines along the railway and viewed the route of the proposed footpath from the station platform.
2. Mr Michael Tonkin, Public Rights of Way Officer, introduced the report which set out the application the County Council had received from Network Rail to divert part of Public Footpath ZR681 at Teynham.
3. Mr Tonkin explained that a number of risk assessments had been carried out on the footpath crossing by Network Rail, and the crossing was currently closed under a Temporary Traffic Regulation Order (TTRO) due to associated risks and a near miss in November 2022. He explained that if the crossing were to be opened at the time of the meeting it would be the second highest risk footpath crossing in Kent.
4. Mr Tonkin said the number of train movements passing over the level crossing was averaged at 183 per day, with an up-line speed of 90mph, and a down-line speed of 75mph. He noted that the up-line speed had been restricted to 80mph in an attempt to mitigate the risk at the level crossing. The main concerns for Network Rail at the crossing were insufficient

sighting, high level of users, misuse of the crossing, the proximity of the level crossing to a railway station, and a large number of vulnerable users, including the elderly and children.

5. Mr Tonkin explained the legislation in relation to the diversion of a public path at a rail crossing contained within Section 119A of the Highways Act 1980, and the tests and criteria, detailed in the report, to be considered under Rights of way circular 1/09.
6. Mr Tonkin said that consultations had been carried out as required by the Highways Act 1980 and a number of objections had been received. He highlighted an error in the report in that Councillor Lloyd Bowen, not Councillor Mike Whiting, had responded with an objection.
7. Mr Tonkin discussed the consultation responses and the evidence received in conjunction with each of the legal tests to be considered and concluded that the case was finely balanced and slightly weighted in Network Rail's favour. He said Network Rail had a safety case and, for the reasons set out in the report and explained to the Panel, the tests under Section 119A of the Highways Act 1980 had been met. He explained that some members of the public who responded objected to the considerably longer route and its convenience. He said rail crossing orders were invariably finely balanced, especially when the reason was on a basis of safety, and it was believed that Network Rail's safety case needed to be considered with greater weight. He referred to two recent rail diversion orders, in Otford and Whitstable, where safety was noted as the primary motivator for the diversion.
8. Mr Tonkin explained that the decision made by the Panel today was not the final decision and the next stage would involve a formal consultation.
9. Mr Tonkin recommended to the Panel that the Applicant be informed that an Order to divert Public Footpath ZR681 from the railway foot crossing to an alignment running parallel to the northern platform of Teynham Station in the Borough of Swale, be made.
10. Mrs Parfitt-Reid asked about the consideration of a footbridge and Mr Tonkin explained this had been discounted for accessibility reasons and clarified that there was not enough room at the site for a slope bridge.
11. Mr Cole agreed that the case was finely balanced and said there was a fundamental argument for freedom of choice. He felt that most behaviour-related safety risks included in the application could be applied to any crossing in the UK. He said people had the right to make decisions and questioned the timing of the application if safety incidents had taken place since 2017.
12. The Applicant, Mr Damian Hajnas (Infrastructure Liability and Contracts Manager – South Region, Network Rail) addressed the Panel. He said Network Rail was subject to a strict regulatory duty and its primary duty was to provide a safe and efficient railway network. He said it was a balancing exercise to ensure maximum safety to passengers and staff whilst trains ran

on time. In 2019 Network Rail embarked on a strategy to reduce risk on crossings and this was therefore a preventative, not reactive exercise. Mr Hajnus reiterated the main risk factors included in the report and highlighted by the Public Rights of Way Officer, including the large number of users (and vulnerable users), the high speed of trains on the line and the limited time users had to react at sight of a train. Mr Hajnus said there had been repeated instances of misuse and the diversion had been carefully selected from a number of options, and the proposed route was much safer. He concluded that he was strongly in favour of the order being made.

13. Councillor Lloyd Bowen (Councillor to Teynham and Lynstead Ward, Swale Borough Council) addressed the Panel in objection to the application. He said he was a long-time user of the crossing, and the proposed diversion would have an effect on people's mental health and on the community. Councillor Bowen said not all eventualities could be covered and compared the crossing to others in the area. He suggested potential adjustments that could be made and said it was essential that the voices of residents were heard. He said the closure of the crossing affected the connectivity and vitality of local business.
14. Mr David Lindop addressed the Panel in objection to the application. He referred to the proposed diversion route which included many trees that acted as a natural screen against the sound and light of the railway. He said the removal of trees would cause disruption and would have an impact on biodiversity and wildlife. Mr Lindop referred to the increase of crime and disorder at the station and said the proposed diversion would bring that closer to residents, including a risk of vandalism to property.
15. Mr Steve Obeirne addressed the panel in objection to the application and referred to the proposed division going through the station car park and said he was concerned for the road safety at the vehicular level crossing.
16. Mr Paul Townson (Chairman of Teynham Parish Council) addressed the Panel and said the crossing was a popular route for residents walking dogs, residents who lived in Conyer who were coming to Teynham to access the school and shops, and the pathway formed part of a fruit walk. He said safety was recognised by residents and he suggested some practical solutions to improve this. Mr Townson also raised some road safety concerns in relation to the proposed diversion.
17. Mr Rich Lehmann (Local Member) addressed the Panel and expressed the view that not enough consideration had been given to the current crossing and suggested some improvements to make the crossing safer including moving it further west, decreasing train speed limits, and additional warning signs. He questioned how much consideration had been given to alternative diversion routes and raised the issue of road safety risks of the proposed diversion and questioned whether the danger was being shifted from one place to another.
18. Mr Damian Hajnas (Infrastructure Liability and Contracts Manager – South Region, Network Rail), as landowner, responded to some of the points raised. He said, regarding the possibility of a footbridge, Network Rail had

considered all the issues including protective characteristics of individuals, value for money and the significant planning issues it would entail. He said Network Rail's principal objective was safety and level crossings were inherently dangerous. In terms of user behaviour and personal responsibility Network Rail considered everybody's safety which included those who were unwell, distracted, young or vulnerable. The mitigation of risk in relation to children had resulted in the speed of the trains being reduced and this was only done in exceptional circumstances. None of the mitigation measures considered would deliver value for money or reduce the risk. He said he was sympathetic regarding the safety of the proposed path behind the platform as it had not yet been tested, and it was expressed openly in the consultation that reasonable measures would be considered, however, he said there was not any evidence to support security issues on the proposed path. He said the land was bought for running the railway and it was not environmentally protected. Regarding road safety of the proposed diversion, he said this was raised early in the consultation with KCC highways and concluded that mitigation measures would be deployed and funded by Network Rail.

19. The Chair invited comments from the Panel.
20. Mr Harman thanked all those who spoke at the meeting. He acknowledged the importance of the safety issues within the risk assessment whilst noting that some level of risk had to be accepted. Mr Harman compared the level of risk against the practicality and cost of the proposed solution.
21. Mr Dance expressed concern for the brick railway building on the down side at the London side of the crossing hindering the vision of trains from London.
22. Mrs Parfitt-Reid said there was always risk and personal accountability could not be mitigated against. She said on balance the proposed diversion was costly for something not supported by the community.
23. Mr Cole questioned why, if safety was the primary element, applications had not been made earlier and whether full exploratory work into different mitigation measures had been explored.
24. The Chair put the recommendation set out in the report to the vote and the Panel agreed unanimously to refuse the order.

RESOLVED that the Applicant be informed that an Order to divert Public Footpath ZR681 from the railway foot crossing to an alignment running parallel to the northern platform of Teynham Station in the Borough of Swale has been refused.

16. **Application to divert part of Public Footpath ZR109 from the foot crossing known as Simpsons Crossing at Bobbing in the Borough of Swale**  
(Item 4)

*Mr Damian Hajnus (Network Rail), Mr Mike Baldock (Local Member), Mr Gareth Randall and Mr Graham Herbert were in attendance for this item.*

1. The Members of the Panel visited the site of the proposed diversion prior to the meeting. This visit was also attended by Ms Gemma Kent from Network Rail (the Applicant).
2. Ms Maria McLauchlan, Public Rights of Way Officer, introduced the report which set out the application the County Council had received from Network Rail to divert part of Public Footpath ZR109 at Bobbing.
3. Ms Maria McLauchlan said the most recent risk assessment was carried out on 2 March 2020 following a near miss on 21 February 2020. The crossing scored a risk rating of C3 (it was C5 in 2013) on Network Rail's All Level Crossings Risk Model ("ALCRM"). This meant it had a high to medium level of both individual and collective risk. At that time, the crossing was ranked as 13<sup>th</sup> out of all crossings in Kent, and 2<sup>nd</sup> highest for footpath crossings.
4. Ms McLauchlan said the key drivers for the application on the grounds of safety were frequency and variety of train movements (including the high-speed passenger services), high levels of use particularly of vulnerable users such as the elderly and children and increased evidence of misuse.
5. Due to the risks associated with the crossing, use of the footpath had been prohibited by a Temporary Traffic Regulation Order since March 2021, initially for a period of 6 months and then extended for another two years until September 2023. A further extension of 2 years had been granted by the Department of Transport, lasting until September 2025.
6. Ms McLauchlan explained that the same legal tests and government guidance to be considered under Rights of way Circular 01/09 were applied as in the case for Teynham West (Item 3) and as set out in the report.
7. Ms McLauchlan discussed the consultation responses and the evidence received in conjunction with each of the legal tests to be considered and concluded that in this case Network Rail had put forward such a safety case as to warrant a temporary Traffic Regulation Order closing the crossing until a suitable alternative could be found, and due to limitations at the site, it was recognised that alternative solutions were also limited. Whilst it was understood that the new route would inconvenience some users of the path, this diversion appeared to be the best proposal that could be found. She said officers were therefore satisfied, for the reasons set out in the report and explained to the Panel, that the legal test of safety was met and that other considerations had been applied.
8. Ms McLauchlan set out the recommendation that the Applicant be informed that an Order to divert part of public footpath ZR109 from the foot crossing, known as Simpsons Crossing, at Bobbing in the Borough of Swale be made on the grounds that it was expedient to divert the path on the grounds of safety of the public.
9. Mr Dance left the meeting.

10. Mr Harman asked about line speed and whether the biggest safety risk was the users rather than the crossing itself and Ms McLauchlan said the misuse of the crossing was part of the safety element.
11. The Applicant, Mr Damian Hajnas (Infrastructure Liability and Contracts Manager – South Region, Network Rail), highlighted that the main risk factors were objective and included the frequency and speed of travelling trains (including variance in train speeds) which affected the perception of risk, and a large number of users were vulnerable ie they were children, the elderly or distracted which impaired their ability to react. He said the safety arguments were well tested and the crossing was evidently unsafe, and the crossing should be closed. He said Network Rail did not consider the risk would be displaced from railway to the road and it welcomed further enhancements to the proposed diversion being brought.
12. Mr Gareth Randall (Chair of Bobbing Parish Council) addressed the Panel in support of the application and said the proposed diversion provided two additional benefits including accessibility (the current crossing had gates which were difficult to pass through for those with pushchairs and bikes) and the removal of the need for trains to sound their horns. Mr Randall said he took a pragmatic approach in that he would like access across the railway again for residents and he understood funding was not available for a bridge.
13. Mr Graham Herbert reinforced the points made by Mr Randall and raised the issue of vehicles parking alongside Sheppey Way Bridge, to which Ms McLauchlan confirmed officers had consulted with Kent Highways who were happy with the proposed diversion.
14. Mr Mike Baldock, Local Member, addressed the Panel in objection of the application and said he had personally used the crossing for 50 years and it had been used for generations by the public. Mr Baldock said, since the crossing was closed, there had been a greater number of safety incidents and the application had over exaggerated the risk and was misleading. He said examples of misuse could apply to any rail crossing. Mr Baldock said most users crossed safely and the claim the crossing was dangerous was unsubstantiated. He said there was a risk that people would continue to use the embankment to cross (via the bridge) if the crossing was not reopened and the proposed diversion under the bridge would be used for antisocial behaviour. Mr Baldock suggested the crossing be reopened with measures put in place to make it safer including, for example, adequate signage and crossing lights, and that the risk be assessed again after a year.
15. Mr Damian Hajnas (Infrastructure Liability and Contracts Manager – South Region, Network Rail), as landowner, responded to some of the points raised. He said the evidence in favour of the order was before the Panel and clarified that Network Rail had not made the application for convenience or to gain anything financially. He reiterated Network Rail's strict regulatory obligation for safety. He said every option had been explored to minimise the impact on the public and the proposed diversion was the only practicable option. In response to the allegation that Network Rail had

exaggerated the evidence Mr Hajnas said they had video footage of people risking their lives on the railway. In relation to the risk assessment on the proposed diversion he said KCC were consulted and barriers alongside Sheppey Way would be enhanced. He said there was not any evidence to suggest that the proposed division would attract antisocial or criminal behaviour.

16. The Chairman invited comments from the Panel.
17. Mr Harman said fatalities by suicide were not a reason to close the crossing and suggested solutions could be put in place to deal with misbehaviour on the railway.
18. Mrs Parfitt-Reid felt this was a sensible diversion as it seemed relatively short but felt there was an argument for and against the recommendation.
19. Mr Cole referred to previous near miss incidents in 2019 and said an attempt to close it then was not made until one incident in 2020 which led to Network Rail applying for a TTRO. Mr Cole asked what the definition of a near miss was and whether anything had changed over the last four years since the incidents in 2019. Mr Hajnus said a near miss was identified at the discretion of the train driver if they were required to apply the emergency break, and it was their responsibility to report it. He said there were numerous other near misses reported as part of the TTRO application and Network Rail had been observing the crossing and working to make it safer for several years.
20. The Chair commented that she was aware of the video footage, but judgments should be based on the evidence presented in the report and to the Panel.
21. The Chair put the recommendation set out in the report to the vote and it was agreed by majority.

RESOLVED that the Applicant be informed that an Order to divert part of public footpath ZR109 from the foot crossing known as Simpsons Crossing, at Bobbing in the Borough of Swale, will be made.

**17. Other items which the Chairman decides are urgent**  
*(Item 5)*

There were no urgent items.

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By: Andrew Ballard – Principal Democratic Services Officer

To: Regulation Committee – 30 January 2024

Subject: Home to School Transport Appeals update

Classification: Unrestricted

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Summary: To provide Members with an overview on Home to School Transport appeal statistics for the period between 1 January 2023 to 31 December 2023 and a brief comparison with transport appeals statistics from 2010 to 2022.

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## **1. Home to School Transport Appeal Statistics 2022**

(1.1) For the period between 1 January 2023 to 31 December 2023 a total of 142 individual appeals were considered by Members of the Transport Appeal Panels of this Committee. 56% 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 2022.

(1.2) The approximate cost to the Council in supplying transport for those successful appeals for the period mentioned above totals: £396,176.

(1.3) An additional 110 appeals were received/scheduled but were not heard due to them being either reassessed by the Transport Team or withdrawn by the parent.

(1.4) There are a further 13 appeals that are still waiting to be heard which are scheduled for January/February 2024.

(1.5) 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. Options available to parents as to how their appeal can be heard**

(2.1) Following Covid, revised arrangements were made in order to facilitate appeals and these have now become standard practice. Parents are

provided with three options as to how they wished their appeals to be heard. These options are, face to face appeals which are held at Sessions House, Maidstone, virtual appeals via video conference on Microsoft Teams; and finally, paper-based appeals where Members considered the case based on the written submissions only.

(2.2) The following table provides Members with a breakdown of how appeals were facilitated during 2023 and the percentage of those being successful.

	Appeals heard	% Upheld
Paper Based Appeals	38	42%
Virtual Appeals	56	66%
Face to Face	48	56%

### **3. Transport Appeal Statistics – 2022**

(3.1) For the period between 1 January 2022 to 31 December 2022 a total of 104 appeals were considered by Transport Appeal Panels. 48% 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, one complaint was received, and no fault was found. The LGSCO provide a breakdown of their findings at <https://www.lgo.org.uk>

<b>5. Recommendation</b> Members are asked to note this report.
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Appendix A – Home to School Transport Appeals table

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

**TABLE 1  
HOME TO SCHOOL  
TRANSPORT APPEALS - 1 JANUARY – 31 December 2023**

<b>Month</b>	<b>Total Scheduled</b>	<b>Total Heard</b>	<b>Upheld</b>	<b>Not Upheld</b>	<b>% Upheld</b>	<b>Approx Cost of transport</b>
January	16	12	7	5	58%	£74, 815
February	32	16	7	9	43%	£56,955
March	17	13	7	6	53%	£5,320
April	27	10	5	5	50%	£26,600
May	14	9	5	4	55%	£0
June	8	4	0	4	0%	£0
July	17	9	9	0	100%	£108,300
August	33	19	13	6	68%	£68,206
September	30	16	13	3	81%	£0
October	24	16	6	10	37%	£46,100
November	23	10	3	7	30%	£9,880
December	11	8	5	3	62%	£0
<b>TOTALS</b>	<b>252</b>	<b>142</b>	<b>80</b>	<b>62</b>	<b>56%</b>	<b>£396176</b>

**TABLE 2  
HOME TO SCHOOL TRANSPORT APPEALS - 2010-2020**

<b>Year</b>	<b>Upheld</b>	<b>Not Upheld</b>	<b>Total Heard</b>	<b>% Upheld</b>
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%
2021	75	42	118	60%
2022	50	54	104	48%

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

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A report by the Public Rights of Way and Access Service Manager to Kent County Council's Regulation Committee on Tuesday 30th January 2024.

### **Recommendation:**

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

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### **Introduction**

1. Kent County Council is a 'Commons Registration Authority', which means that it is responsible for holding the legal records of all registered Common Land and Village Greens in the county – known as the 'Registers of Common Land and Village Greens' – and for dealing with applications to amend those Registers under the Commons Act 2006 ("the 2006 Act").
  - 1.1 The majority of applications received are made under section 15(1) of the 2006 Act, which provides that any person may make an application to the County Council to register land as a new Town or Village Green, where 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 also possible for applications to be made by landowners to voluntarily register land in their ownership as a new Village Green under section 15(8) of the 2006 Act (in which case it is not necessary to demonstrate any evidence of use). This can be useful in situations where, for example, local Councils wish to ensure their land is protected against possible future development, or where developers wish to formally dedicate open space within new developments.
  - 1.3 Additionally, the County Council is also responsible for dealing with other kinds of applications made under the 2006 Act to amend the Registers, for example where the extent of the registered Common Land or Village Green was incorrectly recorded on the Registers.
  - 1.4 Note that whilst the County Council is responsible for managing the legal records, it has no powers in terms of management or enforcement issues relating to Common Land or Village Green, which instead fall to either local Councils or landowners to deal with. Enforcement issues can also be raised by individuals by way of application to a Magistrates Court.

## Current Applications

2. Over the last year, nine applications under section 15 of the Commons Act 2006 have been determined by the County Council. Of those, three applications were refused and the remaining six resulted in the successful registration of new Village Greens in Ashford, Whitstable, Loose and Boughton Monchelsea.
  - 2.1 The applications that were refused include the two extremely complex and highly contested cases at Whitstable Beach and Herne Bay (The Downs). These longstanding cases both involved lengthy Public Inquiries and a nearly 500-page Inspector's report for each matter. The deadline period for aggrieved parties to apply to the High Court for Judicial Review of the County Council's decision in either case has now passed, and no such appeal has been made.
  - 2.2 In 2023, two new applications were received to register land as new Village Green (a reduction on previous years). A further application was received<sup>1</sup>, but returned to the applicant as the land in question was affected by one of the development-related 'trigger events' set out in Schedule 1A of the 2006 Act, such that the County Council was not able to consider it.
  - 2.3 In the summer of 2023, a Public Inquiry was held in Canterbury in respect of the application to register land at Two Fields at Westbere as a Village Green. The Inspector's report has now been received and the matter will be referred to the Regulation Committee Member Panel in the coming months for final decision.
  - 2.4 There are currently four outstanding applications to record new Village Greens (listed at **Appendix A**), two of which comprise voluntary applications by developers that are on hold pending completion of the developments (because the land cannot be registered as a Village Green until it is available for use).
  - 2.5 A further Public Inquiry is scheduled in relation to the application to register land at Bunyards Farm at Allington<sup>2</sup>. This will take place at County Hall and will commence on Tuesday 19<sup>th</sup> March 2024. It is expected to last for four days, during which time the Inspector (a Barrister appointed by the County Council) will hear evidence in support of and in opposition to the application, and in due course prepare a report to the County Council setting out her findings. The matter will then be referred to the Regulation Committee Member Panel for final decision later in the year.
  - 2.6 In addition to the outstanding applications relating to Village Greens, the County Council also has three outstanding applications relating to Common Land. Two of these applications are made on the basis that the pieces of land in question were historically Common Land, but never made it onto the Registers, and they therefore seek to have the affected pieces of land formally registered as Common Land. The third application is made on the basis of an alleged error in the Register of Village Greens which may have resulted in a piece of land being mistakenly removed from the Register.

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<sup>1</sup> A piece of land at Chattenden Court in Maidstone

<sup>2</sup> A Public Inquiry was approved by the Regulation Committee Member Panel meeting on Friday 15<sup>th</sup> September 2023: <https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=182&MId=9382&Ver=4>

2.7 One of those applications is currently with the Planning Inspectorate (because it is of a type for which the Inspectorate is the 'determining authority'), and the other two will be referred to the Regulation Committee Member Panel for final decision later in due course.

### **Recommendation**

3. 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

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### **Appendices:**

**APPENDIX A:** List of outstanding applications under the Commons Act 2006

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**APPENDIX A:  
Schedule of Commons Act 2006 applications**

**Outstanding Village Green applications (under section 15)**

<b>Description</b>	<b>Parish</b>	<b>Member(s)</b>	<b>Status</b>
Land known as Two Fields (VGA681)	Westbere	Mr. A. Marsh	Public Inquiry held – Inspector’s report to be referred to Panel for decision
Land at Hoplands Farm ( <i>voluntary dedication</i> ) (VGA682)	Hersden	Mr. A. Marsh	On hold pending construction of development
Land at Bunyards Farm (VGA687)	Aylesford	Mr. A. Kennedy	Public Inquiry to be held
Land at Cockerling Farm ( <i>voluntary dedication</i> ) (VGA692)	Thannington	Mr. M. Sole	On hold pending construction of development
Church Street Playing Fields, Whitstable (VGA693)	Whitstable	Mr. R. Thomas	Awaiting investigation

**Other outstanding applications to amend the Registers**

<b>Description</b>	<b>Parish</b>	<b>Member(s)</b>	<b>Status</b>
Application to amend 16 pieces of Common Land in the Sevenoaks area (CAA19)	Seal and Sevenoaks Weald	Ms. M. McArthur Mr. R. Gough	Awaiting further comments from parties
Application to register missed Common Land at Greenway Forstal (CAA21)	Harrietsham	Ms. S. Prendergast	With the Planning Inspectorate for decision
Application to re-register land at The Moor at Hawkhurst (CAA24)	Hawkhurst	Mr. S. Holden	Awaiting investigation

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## Update on Planning Enforcement Issues

## Item 7

Report by Head of Planning Applications Group to the Regulation Committee on 30<sup>th</sup> January 2024.

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 into events, operational matters and activities of the County Planning Enforcement service, since the 17<sup>th</sup> October 2023 Regulation Committee.
2. KCC planning enforcement remains under both resourcing and operational pressures, with an increasing caseload and complexity, especially at the priority strategic end of the spectrum. An increase in alleged waste criminal activity to this level, is continuing across the county, often in the context of a mix of planning uses.
3. The County Council regularly works with allied bodies and the police and is actively seeking to incorporate government bodies such as Natural England (NE) and His Majesty's Revenue and Customs (HMRC) into local enforcement work.
4. Collaboration and sharing of resources are key, particularly given current economic and spending pressures within the public sector and the range of planning uses involved. Joint operational working has shown to be effective in cost and enforcement terms.

### Report Format

5. Our reporting to the Regulation Committee on planning enforcement matters comprises of two main parts.
6. The first being 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 in relation to team actions with other regulatory bodies. Data security in this field of work is inherently important.
7. The second is the 'closed' or 'exempt' report (within Item 9 of these papers) containing restricted details on cases. These report the work conducted, 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 including 'cross-over' work with partner bodies and finally alleged compliance issues at permitted sites.

8. In this way, a more in-depth analysis of alleged unauthorised activities becomes possible, with cross-comparisons between sites and the search for patterns of alleged contravening behaviour. It also enables the confidentiality of the content and strategy of any proposed planning enforcement action to be protected, along with any sensitive gathered evidence.
9. Hearing the details of cases in closed session further allows for uninhibited discussion, in seeking Member endorsement, on our own or joint enforcement strategies with other regulatory authorities (with their own need for confidentiality).
10. As a counter-balance to security restrictions, a list is provided, under paragraph 11 below, of the cases that will be covered 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. Notwithstanding that, forward momentum still continues in the background, on the restoration of affected sites.
11. Our current and immediate operational workload, qualified by remit and with resource priority (with other cases on a 'holding' database) is as follows:

**County Matter cases** (complete, potential, forming a significant element or as a regulatory group contribution)

- 01 **Hoads Wood**, Bethersden, Ashford
- 02 **Swanton Lane**, Littlebourne, Canterbury
- 03 **Ancient Woodland Adjacent to Knoxfield Caravan Site**, Darent Wood Road, Dartford
- 04 **Oaktree Farm**, Halstead, Sevenoaks
- 05 **Warden Point and Third Avenue**, Eastchurch, Isle of Sheppey
- 06 **Raspberry Hill Park Farm**, Raspberry Hill Lane, Iwade, Sittingbourne

**District or EA referrals** (or those district or EA cases of potential interest)

- 07 **Manor Farm, Willow Lane**, Paddock Wood
- 08 **Knowle Farm**, Malling Road, Teston, Maidstone
- 09 **Court Paddock Farm**, Ightham (Member: Harry Rayner)
- 10 **Former Travel Lodge / Brother Hood Woods**, Boughton Bypass Dunkirk

12. All alleged unauthorised cases received are triaged, researched and investigated to establish whether there is a statutory remit for the County Council, unless it is clearly not for KCC planning enforcement. Among the cases are those that may ultimately be handled by other authorities and agencies or where we contribute within multi-agency settings.

13. A further workload area relates to alleged compliance issues at permitted sites. These mainly relate to alleged breaches of planning conditions, arising from site management issues.

**Permitted sites** (compliance issues)

- 01 **Cobbs Wood Industrial Estate**, Ashford.
- 02 **The Old Tilmanstone Colliery**, Pike Road, Eythorne.
- 03 **Cube Metals**, Unit A, Highfield Industrial Estate, Bradley Road, Folkestone.
- 04 **RS Skips**, Apex Business Park, Shorne.
- 05 **Teston Bridge Country Park**, Teston Lane, Maidstone
- 06 **East Kent Recycling**, Oare Creek, Faversham
- 07 **Borough Green Sandpits**, Platt, Borough Green
- 08 **Wrotham Quarry (Addington Sandpit)**, Addington, West Malling
- 09 **H&H Celcon**, Ightham

**Meeting Enforcement Objectives***Alleged strategic waste crime*

14. There are now six strategic planning enforcement cases spread across the county, requiring priority attention in a group regulatory context. Each site has attracted a dedicated task force, drawn from specialised staff with police involvement from all operational perspectives.
15. Government bodies with bespoke enforcement powers against alleged serious waste crime are part of the teams, notably the Environment Agency (EA). KCC Planning Enforcement has long been forging links with a range of government organisations and results are starting to tell. Two EA Restriction Orders have been secured on strategic sites at Third Avenue, Eastchurch on the Isle of Sheppey and Hoads Wood, Bethersden, Ashford. Others are under consideration. The measure allows for sites to be sealed, preventing alleged waste importation and related contravening activities and damage, both on and off site. Any interference with these enforced site closures is a criminal offence in its own right.
16. KCC Planning Enforcement has sought to bring both organisations and their enforcement powers into a collective effort to overcome the limitations of single authority actions. Momentum towards that overall aim is building, designed in particular to combat the current surge in alleged organised waste crime with apparent interconnecting sites across the county. Some of these techniques are also being applied to smaller sites with effect, ensuring as far as possible timely attention and access to a wider range of powers, at all scales of alleged unauthorised waste activities.

**Monitoring****Monitoring of permitted sites and update on chargeable monitoring**

17. In addition to 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 currently being addressed with additional support from agency staff.

**Resolved or mainly resolved cases requiring monitoring**

18. 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 the priority strategic enforcement cases mentioned within this report but remains on a reactive basis.

### **Levelling up and Regeneration Act 2023**

19. The Levelling up and Regeneration Act came into force on 26th October 2023. It includes a number of new provisions which impact upon planning enforcement, although further enabling legislation is required before the provisions come into force. In summary the changes are:

- The power to issue Temporary Stop Notices (TSN) in respect of works to Listed Buildings – in force for up to 56 days;
- New Development Commencement Notices’ and ‘Completion Notices’; and
- A number of revised enforcement planning controls.

20. A new provision for Commencement Notices will apply where a planning permission has been granted for development. Before the development has begun, the person proposing to carry it out must give notice (a ‘Commencement Notice’) to the Local Planning Authority (LPA), stating when they propose to commence the work. If work does not commence on that date, the Notice must be varied. Where the LPA considers that a person has failed to comply with the requirements, they may serve a notice on any relevant person, requiring the relevant information to be submitted to the LPA. Failure to provide the information within 21 days is an offence.

21. There are also new provisions for Completion Notices, where a planning permission has been granted for development and is subject to the ‘commence within 3 years’ condition, and this condition was complied with, but the development has not been completed. Should the LPA consider that the development will not be completed within a reasonable time period, then they may serve a notice (‘Completion Notice’) stating that the planning permission will cease to have effect at a specified time. The Notice is served on the owner of the land, the occupier of the land and any person with an interest in the land. There are new provisions to appeal against a Completion Notice; on the grounds that it will be completed within a reasonable time, the Notice deadline is unreasonable or it was wrongly served.

22. Changes to the time limits for enforcement by removal of the 4-year rule are proposed. Once in force, all breaches of planning control can only become immune from enforcement action after 10 years. The Act also amends the

duration of Temporary Stop Notices from 28 days to a maximum of 56 days.

23. The legislation introduces a new Enforcement Warning Notice (EWN) where it appears to the LPA that there has been a breach of planning control and that there is a reasonable prospect that, if an application is made, permission would be granted. The EWN must state that unless an application for planning permission is made within a period specified in the notice, further enforcement action may be taken. The driver behind this provision is to reduce the number of appeals for 'acceptable' developments when an Enforcement Notice has been served.
24. There are two changes in relation to appeals. The first places new restrictions on appeals against enforcement notices which removes the possibility of an applicant applying for planning permission, appealing a refusal, then appealing through the enforcement notice route (ground (a)), with this last stage to be prohibited. The Secretary of State is to have the authority to dismiss appeals where it appears to them that the appellant is responsible for undue delays in the progress of the appeal. This will apply to enforcement appeals and certificate of lawfulness appeals.
25. Finally, the penalties for non-compliance have been increased for a Breach of Condition Notice (BCN) with the removal of the words in s187A of the Town and Country Planning Act 'not exceeding level 3 on the standard scale'. In effect this means that on conviction in theory, the fine for breaching a breach of condition notice would be unlimited. Whilst the County Council does not have the authority to serve s215 (Site Clearance Notices), they are a potentially very useful tool for the Borough and District Councils. Once in force, the fine for breaching a S215 notice can now be higher than previously.

## **Conclusion**

26. The operating context for county planning enforcement is continually challenging and complex, especially at the strategic and priority end of the spectrum. The joining of forces is a natural response, with a considerable investment of time and effort to that end, from the KCC planning enforcement team. That has culminated in several direct actions involving Environment Agency Restriction Orders, to physically prevent serious alleged and active waste contraventions from occurring. The strength of collegiate working is very evident and is fast becoming a standard operational approach.

## **Recommendation**

27. I RECOMMEND that MEMBERS NOTE & ENDORSE:

- (i) the actions taken or contemplated in this report and the proposed legislative changes for planning enforcement arising from the Levelling Up



and Regeneration Act 2023.

Case Officers: KCC Planning Enforcement  
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Background Documents: see heading.

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

Agenda Item 9

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