

REGULATION COMMITTEE

Tuesday, 17th September, 2024

10.00 am

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





AGENDA

REGULATION COMMITTEE

Tuesday, 17th September, 2024, at 10.00 am
Council Chamber, Sessions House, County Hall, Maidstone

Ask for: **Hayley Savage**
Telephone: **03000 414286**

Membership (15)

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

Labour: Mr B H Lewis and Ms J Meade

Liberal Democrat: Mr I S Chittenden

Green and Independent: Mr M Baldock

UNRESTRICTED ITEMS

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

1. Apologies and Substitutes
2. Declarations of Interests by Members in items on the Agenda for this meeting.
3. Minutes from the meeting held on 29 July 2024 (Pages 1 - 2)
4. Update from the Public Rights of Way and Access Service (Pages 3 - 6)
5. Update on Planning Enforcement Issues (Pages 7 - 12)
6. 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)

7. Exempt Minutes from the meeting held on 29 July 2024 (Pages 13 - 14)
8. Update on Planning Enforcement Cases (Pages 15 - 34)

Benjamin Watts
General Counsel
03000 416814

Monday, 9 September 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

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Monday, 29 July 2024.

PRESENT: Mr S C Manion (Chairman) Miss S J Carey (Vice-Chairman) Mr T Bond, Mr I S Chittenden, Mr P Cole, Mr M C Dance, Peter Harman, Mr B H Lewis, Ms J Meade and Mrs L Parfitt-Reid

ALSO PRESENT: Mrs C Bell and Mr D Murphy

IN ATTENDANCE: Team Leader - Planning Enforcement, Mrs S Thompson (Head of Planning Applications), Mr B Watts (General Counsel), Mr T Godfrey (Senior Governance Manager), Ms H Savage (Democratic Services Officer), Mrs S Holt-Castle (Director of Growth and Communities) and Ms S Bonser (Solicitor)

UNRESTRICTED ITEMS

67. Apologies and Substitutes

(Item 1)

Apologies had been received from Mr Ozog.

Formal apologies had been received from Mr Beaney and Mr Rayner who were attending virtually.

68. Declarations of Interests by Members in items on the Agenda for this meeting.

(Item 2)

There were no declarations of interest.

69. Minutes

(Item 3)

RESOLVED that:

- (a) the minutes of the Regulation Committee meeting on 7 May 2024 are correctly recorded and that they be signed by the Chairman.
- (b) the minutes of the Regulation Committee Member Panel on 22 April 2024 are correctly recorded and that they be signed by the Chairman.

70. Other Items which the Chairman decides are Urgent

(Item 4)

There were no urgent items.

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)

71. Exempt Minutes of the meeting held on 7 May 2024

(Item 5)

RESOLVED that the exempt minutes of the Committee meeting on 7 May 2024 are correctly recorded and that they be signed by the Chairman.

72. Planning Enforcement Issues

(Item 6)

1. The Head of Planning Applications, The Planning Enforcement Team Leader, and the Director of Growth & Communities introduced the report.
2. The General Counsel informed Members that officers within the Council's governance team would be reviewing the Committee's Terms of Reference, whilst considering the Committee's role and how it informs decision making.
3. RESOLVED that the Committee notes paragraphs (a) and (b) of the recommendation in the report, and notes and endorses paragraph (c) of the recommendation in the report.

Update from the Public Rights of Way & Access Service

A report by the Head of Public Rights of Way and Access to Kent County Council's Regulation Committee on Tuesday 17 September 2024.

Recommendation:

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

Progress with Definitive Map & Statement applications

1. Members requested that a summary of the current position in respect of applications to amend the Definitive Map and Statement (DMS) be provided annually to the Regulation Committee.

Section 53 Applications

2. Any person may make an application to the County Council, as the Surveying Authority, under section 53 of the Wildlife & Countryside Act 1981, to amend the DMS to add, upgrade, downgrade, or delete a Public Right of Way. The County Council has a duty to investigate every application it receives. Investigation involves undertaking interviews with witnesses and landowners, documentary research and consultation, amongst other things. It is our policy to deal with these applications in order of receipt except where:

- the physical existence of the claimed route is threatened by development or,
- the resolution of an application would enable the County Council to substantially improve public safety or
- the claimed route may result in a significant improvement to the network.

In such instances a case may be accelerated.

2.1. During the period April 2023 to March 2024, 13 applications were determined, 7 Orders were made and 5 were confirmed. 24 cases are currently under investigation with a further 14 having recently been allocated. To date there are 95 unallocated applications (as of 3 September 2024). The number of applications received fluctuates with 37 applications being received in 2020, 19 in 2021, 21 in 2022, 7 in 2023 and 38 received in 2024 to date. The next application to be allocated was received in July 2020 indicating a backlog of close to 4 years. However, when considering that on average, 12-14 applications are determined each year, the reality is that the current backlog is nearer to 7 years. As reported last year, two newer members of staff have been allocated their own applications. This has resulted in an increased capacity allocated to this area of work and therefore the number of applications that can be progressed. So far this year 23 applications have been allocated compared to 15 during the previous year.

2.2. There are 6 cases with the Planning Inspectorate awaiting determination as objections were received to the made Order.

2.3. The Schedule of Applications is updated on a regular basis and can be located on the County Council's website at:

<http://www.kent.gov.uk/waste-planning-and-land/public-rights-of-way/correct-the-rights-of-way-map>

2.4. The backlog in applications and the disparity between the number of applications being received when compared with the number being determined nationally was the subject of a recent BBC report: [Public rights of way applications backlog concerns campaigners - BBC News](#)

Applications to divert, extinguish or create public rights of way

3. As part of its rights of way functions, the County Council also deals with applications from landowners to divert or extinguish public rights of way using powers available to it under the Highways Act 1980. Public Rights of Way can be diverted for a range of reasons provided that it is 'expedient' (or necessary) to do so and that the proposed diversion is not substantially less convenient, or less enjoyable, for users. The test for extinguishing (stopping up) a right of way is considerably narrower, and it is only possible to do this in cases where the right of way is 'unnecessary' or 'not needed for public use'.

3.1. During the period April 2023 to March 2024, 23 Public Path Orders have been confirmed, an increase of 8 from the previous year. There are 31 unallocated diversions/extinguishments resulting in a backlog of approximately 2 years between the receipt of an application and allocation to an officer.

3.2. There are 2 Orders with the Planning Inspectorate awaiting determination as objections were received to the made Order.

3.3. The County Council also deals with applications made under the Town & Country Planning Act 1990 to close or divert public rights of way that are affected by development. This work is undertaken on behalf of Ashford, Canterbury, Dartford, Dover, Gravesham, Folkestone and Hythe, Sevenoaks, Swale, Tonbridge & Malling & Tunbridge Wells Councils and the Ebbsfleet Development Corporation. A small number of applications are also processed in respect of our own planning functions. During the period April 2023 to March 2024, 17 Public Path Orders have been confirmed/certified. There are 28 cases where Orders have been made and confirmed and are awaiting certification following the completion of the works on site.

3.4. There is 1 Order with the Planning Inspectorate awaiting determination.

3.5. The Schedule of Applications, which is updated on a regular basis, can be located on the County Council's website at:

<http://www.kent.gov.uk/waste-planning-and-land/public-rights-of-way/change-rights-of-way>

Statutory Deposits under section 31(6) of the Highways Act 1980 and/or section 15A(1) of the Commons Act 2006

4. This is a means by which landowners can protect their land against further public rights of way or a village green from being registered as a result of future unchallenged, as of right, public use.

4.1. During the period April 2023 to March 2024, 37 Deposits have been received, an increase of 12 from the previous year.

Land Searches and Temporary Traffic Regulation Orders

5. The Definitive Map Team also provide local authority search responses in respect of public rights of way and common land and village greens. The Team processes the Temporary Traffic Regulation Orders required by the Public Rights of Way and Access Service when undertaking maintenance work, or to ensure public safety. Orders are also made to facilitate work by statutory undertakers, landowners and developers. The full cost of providing these services is recovered from the applicant. Given that much of this activity is tied to the state of the housing market and the level of development it does fluctuate and may impact on the capacity of the team to progress Public Path and Definitive Map Modification Order applications.

Backlogs

6. I have referred to the application backlogs above at paragraphs 2.1 and 3.1. The backlogs for applications to both divert/extinguish public rights of way and to amend the DMS reflect the complex and lengthy procedures to be followed. There is a strong correlation between the number of applications determined and the number of experienced officers available to undertake the work. Additionally, there is no ability to limit the number of applications to amend the DMS that are received in any year. It is interesting to note that whilst the backlog for applications to amend the DMS has remained similar, the backlog for applications to divert/extinguish has slightly decreased. This is partly due to a reduction in applications received, with only 2 Town & Country Planning Act applications having been received so far this year.

6.1 As I have stated above, we have 9 Orders currently with the Planning Inspectorate. The Planning Inspectorate determine Orders to which objections or representations have been received. The Inspectorate has a backlog of Orders to be determined, which currently stands at approximately 9 months from the submission of the Order to it being reviewed by a case officer. Determination and the issuing of a decision may take many more months. Their backlogs directly impact on our work.

Legislative Update

7. Deregulation Act 2015 – The Deregulation Act was enacted on 27 March 2015, however, a package of reforms in relation to PROW have still not come into force as the associated regulations and guidance are still to be laid or published. Progress was made earlier in the year and DEFRA had given dates of when the provisions were likely to come into force. However, they were not able to meet the specified timescale, due to a change in staff and the general election. This is not the first time this has happened since the Deregulation Act was enacted. Currently no dates have been given as to when the regulations are expected to come into force.

7.1. Countryside and Rights of Way Act 2000 , 2026 cut-off-date - This is where all unrecorded rights of way created before 1949 are to be extinguished immediately after 1 January 2026 – subject to certain exceptions (saving provisions): -

- It provided for Local Authority's to designate a right of way for protection during a short window after the cut-off – a one year period.
- It anticipated that routes identified on the list of streets/local street gazetteer as publicly maintainable or as private streets carrying public rights would be preserved.
- It preserved rights over routes that were subject to a pending application.

7.2. I reported at the last update that Defra has determined that the cut-off-date will be brought into force on 1 January 2031. This will, in effect, act as a guillotine, after which time no further applications can be submitted based on historical evidence, subject to savings provisions many of which are yet to be set out in regulations. In light of this stakeholders are continuing with their research and submitting applications. This can be seen from the large number of applications received already this year, as out of the 38 applications received, 28 of them have been submitted by the British Horse Society and are based upon pre-1949 historical evidence. It is anticipated that many more will be received before the cut-off-date comes into force.

Recommendation

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

Contact Officers:

Laura Wilkins – Definitive Map Team Leader
Tel 03000 41 34 80 – Email: laura.wilkins@kent.gov.uk

Graham Rusling – Head of Public Rights of Way and Access
Tel: 03000 41 34 49 - Email: graham.rusling@kent.gov.uk
Public Rights of Way & Access Service

Update on Planning Enforcement Issues

Item 5

Report by Head of Planning Applications Group to the Regulation Committee on
17th September 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 7th May 2024 Regulation Committee. There was a further confidential meeting of the Committee held on 29th July 2024, the contents of which cannot be addressed in this open report.
2. Planning enforcement workloads remain, especially at the strategic level, though medium to smaller sites are also well represented. At all levels, collaboration with ally bodies is a common and beneficial way of working for all parties, with the format translating well in most cases. It particularly helps with sites that attract interest from multiple remits, along with those that require frequent monitoring. Expertise and specialist equipment can be shared (such as drones) helping to optimise all available capabilities in the public interest.

Report Format

3. Our reporting to the Regulation Committee on planning enforcement matters comprises of two main parts.
4. 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.
5. The second is the 'closed' or 'exempt' report (within Item 8 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). Followed then by district referrals, including those where issues of jurisdiction remain, including 'cross-over' work with partner bodies and finally alleged compliance issues at permitted sites.
6. That format allows for free discussion of alleged contravening behaviour, enabling patterns to be revealed. This in turn is discussed confidentially with

Update on Planning Enforcement Issues

Item 5

Members, in order to safeguard both enforcement strategies and legal evidence. Member endorsement is sought on individual sites and in terms of group regulatory initiatives.

7. To remain as transparent as possible, a list is provided, under paragraph 8 below, of the cases that are covered in the exempt report. This covers those sites currently active, or new reported activities 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.
8. Our current and immediate operational workload, qualified by remit and with resource priority 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 **Warden Point and Third Avenue**, Eastchurch, Isle of Sheppey
- 04 **Raspberry Hill Park Farm**, Raspberry Hill Lane, Iwade, Sittingbourne
- 05 **Bell Lane Farm**, Minster-on -Sea, Isle of Sheppey
- 06 **Ancient Woodland Adjacent to Knoxfield Caravan Site**, Darenth Wood Road, Dartford
- 07 **Oaktree Farm**, Halstead, Sevenoaks

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

- 08 **Manor Farm, Willow Lane**, Paddock Wood
- 09 **Knowle Farm**, Malling Road, Teston, Maidstone
- 10 **Court Paddock Farm**, Ightham
- 11 **Former Travel Lodge / Brotherhood Woods**, Boughton Bypass Dunkirk
- 12 **The Pines Nursery**, Gravel Castle Road, Barham

13 Pike Road / Thornton Kennels, Tilmanstone

9. All alleged unauthorised cases received are triaged, researched and investigated to establish whether there is a statutory remit for the County Council. Some cases may ultimately revert to other authorities and agencies and there will be those which we may contribute to within multi-regulatory settings.
10. 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 **Shelford Landfill, Broad Oak Road, Canterbury**
- 02 **Cube Metals**, Unit A, Highfield Industrial Estate, Bradley Road, Folkestone.
- 03 **RS Skips**, Apex Business Park, Shorne.
- 04 **East Kent Recycling**, Oare Creek, Faversham
- 05 **Borough Green Sandpits**, Platt, Borough Green
- 06 **Wrotham Quarry (Addington Sandpit)**, Addington, West Malling
- 07 **H&H Celcon**, Ightham

Meeting Enforcement Objectives

Alleged strategic waste crime

11. There are a number of 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. Three sites, at Third Avenue, Eastchurch (Isle of Sheppey), Hoads Wood, Bethersden, Ashford and more recently Swanton Lane, Canterbury are subject to Environment Agency Restriction Orders, preventing alleged unauthorised access for the importation of waste materials and associated environmental damage and amenity impacts. This ultimate direct action is now a considered option in the more severe cases, both as an urgent first resort and as a means to consolidate any escalating series of actions.

Other, largely small to medium size sites

12. KCC Planning Enforcement is actively engaged in the strategic sites but there are

a range of small to medium size sites, which are becoming more numerous, with approximately, three times the expected referral rate to this Authority over the summer. These are of a traditional nature in general but in some cases waste crime features can be detected and the sites are invariably more persistent and difficult to turn around.

13. Collaborative efforts with other bodies are needed to keep ahead of this surge in cases. It helps to overcome the limitations of single authority actions and generally speaking, provides a quicker and more complete response from the public sector side. Indeed, there are multiple operational benefits for all of the regulatory parties involved.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

14. 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. A limited number of statutory monitoring visits have been undertaken. Alleged planning contraventions at permitted sites are currently being addressed with additional support from agency staff.

Resolved or mainly resolved cases requiring monitoring

15. 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 and the surge in other cases within this report but remains on a reactive basis.

Conclusion

16. County planning enforcement is a demanding sphere of work both in content and through increasing complexity. The strategic sites persist but importation of waste at three of them has been stopped in a group regulatory context by Environment Agency Restriction Orders. The recent surge in medium to smaller sites is another operational priority, completing now a spectrum of concern at all levels of activity. In that context, group regulatory work becomes ever more important especially keeping a full range of available actions open.

17. Recommendation

I RECOMMEND that MEMBERS NOTE & ENDORSE:

Update on Planning Enforcement Issues

Item 5

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

Case Officers: KCC Planning Enforcement

03000 413380

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 7

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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 8

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