

KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Thursday, 27 January 2022.

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

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

UNRESTRICTED ITEMS

1. Minutes

(Item 3)

(1) In respect of Minute 34 of the Regulation Committee Member Panel, the Committee agreed to its amendment so that that Mr Baldock's comments more accurately set out in that he said that a Local Plan set out the planning considerations for determining future planning applications. Each application had to be considered on its merits, so the Plan could not rule out any development whatsoever. It was only possible to apply general policies when the Plan was being developed.

(2) RESOLVED that subject to (1) above, the Minutes of the Committee meeting on 23 September 2021 and of the Regulation Committee Member Panel on 2 December 2021 are correctly recorded and that they be signed by the Chairman.

2. Home to School Transport Appeals Update

(Item 4)

(1) The Principal Democratic Services Officer provided the Committee with an overview of Home to School transport appeal statistics for the period between 1 January 2021 and 31 December 2021 together with a brief comparison to transport appeal statistics from 2010 to 2020.

(2) The Principal Democratic Services Officer replied to Members' question on whether there was a reason for the greater number of upheld appeals over the previous seven years. He said that it was difficult to identify the reason for this trend as each appeal had to be treated entirely on its merits. He added that since the appointment of the present Chairman, reviews of the Panel's decisions were only being carried out for specific reasons. Previously, the Panel had often made time-limited decisions with a review automatically being carried out after a year.

(3) Members of the Committee expressed the work carried out by all concerned, noting that Officers had no discretion to override the Home to School Transport Policy for any reason. Exceptions to the Policy could only be made by the Panels themselves.

(4) RESOLVED that the report be noted.

3. Update from the Public Rights of Way and Access Service - Common Land and Village Greens

(Item 5)

(1) The Public Rights of Way and Access Service Manager introduced the report which concentrated on applications related to the determination of Village Green Registration applications, including an explanation of “trigger events” which prevented the County Council from considering a Village Green application if the land in question was subject to a planning application or had been identified for development in a Local or Neighbourhood Plan.

(2) The Public Rights of Way and Access Service Manager drew the Committee’s attention to the successful clearance of the backlog in dealing with Village Green applications, enabling new applications to be dealt with fairly soon after confirmation by the relevant planning authorities that no “trigger event” applied to them.

(3) RESOLVED that the report be noted.

4. 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 23 September 2021. She referred to paragraphs 23 and 24 of the report, saying that Government Legislation would be required to bring about a synchronisation of powers between the Environment Agency and Planning Authorities to ensure that Environment Agency Permits were no longer issued to sites which did not have planning permission. She drew attention to a recent government consultation on fly tipping and illegal waste exports and suggested that this might provide an opportunity to seek these powers.

(2) Following discussion on the potential opportunities in the consultation paper, the Head of Planning Applications offered to arrange a briefing on the subject.

(3) RESOLVED that;-

- (a) the actions taken or contemplated in the report be noted and endorsed; and
- (b) the Head of Planning Applications’ offer to arrange a briefing on the government’s consultation paper on fly tipping and illegal waste exports be accepted.

5. Urgent decision taken under delegated powers

(Item 8)

(1) The Head of Planning Applications reported her Urgent decision to not pursue enforcement action for the temporary development of a place of rest on the former County Workshop site at Aylesford. This decision had been taken under section 10.15 of the Constitution which empowered KCC Officers to take action on urgent matters where there was no time to consult with the Committee or for the Committee to exercise its function.

(2) The Head of Planning Applications went on to say that, under the circumstances described, the Constitution required Officers to consult with the Chair of the Committee as well as Local Members if time permitted.

(3) A Non-Executive Officer Record of Decision had been completed by the relevant Officer setting out the decision taken and the reasons for it. This included a summary of the key points raised by those Members consulted.

(4) The Head of Planning Applications then set out her decision as follows:-

For a temporary place of rest in response to the COVID-19 pandemic at the former County Workshops Site, Aylesford to agree that the County Council as Planning Authority exercises its discretion not to pursue enforcement action and concludes that it is not expedient to take enforcement action for the temporary development of a place of rest on the former County Workshop site Aylesford, subject to the following conditions:

(1) On or before 31st December 2022

(i) Any use of the land for the purpose of a temporary place of rest shall cease and any associated buildings, plant, machinery, structures and erections on site erected for this purpose shall be removed; and

(ii) the land shall be restored to its condition before the development took place.

(2) The operator to ensure compliance with relevant legislation relating to the facility.

(3) The Head of Planning Applications then set out the reasons for her decision. It related to a request by the Director of Infrastructure for the temporary development of a marquee structure, a 'Nutwell' temporary unit and security fencing on the site of the former County Workshops Site in Aylesford to provide a temporary place of rest to respond to the covid-19 pandemic. Under the circumstances, a decision was sought as to whether the County Council as planning authority would exercise its discretion not to pursue enforcement action and conclude that it is not expedient to take enforcement action for the temporary development.

(4) In concluding that it was not expedient to take enforcement action, the Head of Planning Applications had regard to the following factors:-

- (a) The discretionary function of planning enforcement. Such action should only be taken when it was expedient to do so, having regard to all material considerations. Local planning authorities should act proportionately in responding to suspected breaches of planning control;
- (b) The Written Ministerial Statement of Robert Jenrick, dated 13 March 2020, which emphasised the discretionary nature of enforcement action, particularly in light of the issues raised by the coronavirus pandemic;
- (c) An additional temporary place of rest was` required within the County as a contingency to respond to the Covid-19 pandemic, particularly in light of pressures associated with the Omicron variant;
- (d) The County Council had an obligation under the Civil Contingency Act 2004 to take the lead in responding to humanitarian impacts that result from an emergency;
- (e) The previous Statutory Instrument (SI) 2020.412 which temporarily introduced permitted development rights to address development matters arising as a result of covid-19. This provided, subject to certain criteria being met, additional permitted development rights to local authorities. Where the specified criteria were satisfied, development was deemed to be permitted and a planning application was not required. This legislation lapsed in December 2020, requiring an urgent decision in advance of Government re-enacting such legislation.
- (f) The proposed development satisfied the criteria set out in the earlier permitted development legislation.
- (g) Planning merits considerations which balanced the need for the development against economic, environmental, and social considerations.

(5) The Head of Planning Applications said that, in this instance, she was satisfied that the temporary and pressing need for the development outweighed other planning considerations. She noted that:-

- (a) The operator would be responsible for ensuring compliance with the relevant legislation relating to the facility. No post-mortem examinations or tissue/organ sampling would be taking place on site and there would be no public access. Operational procedures would be put in place to ensure that, during operation and decommissioning, environmental impact was minimised; and
- (b) Given the dynamic nature of the emergency response to the pandemic, legislative support for such activities was fast changing. Should the government not re-enact the Statutory Instrument relating to permitted development rights in a reasonable period of time, the Director of Infrastructure had confirmed that a retrospective planning application for the development of the temporary facility would be made.

(6) The Head of Planning Applications reported that the Local Members, Cabinet Members and the Chairmen of the Planning Applications Committee and the Regulation Committee had been consulted and that she had received no objection. A number had supported the proposal.

(7) The Head of Planning Applications had also considered whether use of Urgency Powers was justified. She had concluded that it was as there was a pressing need to provide for an additional temporary place of rest within the County as a contingency to respond to the Covid-19 pandemic, particularly in light of current pressures associated with the Omicron variant. In this instance, there had been insufficient time for a retrospective planning application to be considered by the Council's Planning Applications Committee. The decision was taken late December 2021.

(8) RESOLVED that the report be noted.

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)

6. Update on Planning Enforcement cases *(Item 9)*

- (1) The Head of Planning Applications and the Team Leader-Planning Enforcement gave an update on unauthorised (or part unauthorised) planning enforcement matters setting out actions taken or contemplated at Raspberry Hill Park Farm, Iwade; Warden Point, Eastchurch; Surf Crescent, Eastchurch; Foxdene, Stockbury; Chetney Marshes, Iwade; Springhill Farm, Fordcombe; Water Lane, Thurnham; Hoads Wood Farm, Bethersden; Double Quick Farm, Lenham; Ringwould Alpine Nursery; Fairfield Court Farm, Brack Lane, Brooklands, Romney Marsh; Chapel Lane, Sissinghurst; Land off Maypole Lane, Canterbury; East Kent Recycling, Oare Creek, Faversham; Cobbs Wood Industrial Estate, Ashford; Court Lodge Farm, Stack Road, Horton Kirby; R S Skips, Apex Business Park, Shorne; Flisher Energy, Fernfield Lane, Hawkinge; Unit 2, Katrina Wharf, Wharf Road, Gravesend; Cube Metals, Unit A, Highfield Industrial Estate, Bradley Road, Folkestone; Borough Green Sandpits; Wrotham Quarry (Addington Sandpit), West Malling. Maidstone Grammar School, Barton Road, Maidstone; Old Tilmanstone Colliery, Pike Road, Eythorne; and Land to the south of Manor Way Business Park, Swanscombe.
- (2) Members debated whether a “sunset clause” should be inserted in respect of enforcement cases. The Head of Planning Applications confirmed that the actions and proposed actions for each site were always reported to the following meeting of the Committee unless the agreed action was that no further action be taken.
- (3) The enforcement strategy set out in paragraph 31 of the report was agreed by 10 votes to 1.
- (4) The Head of Planning Applications amended her recommendations for some of the permitted sites to encompass the possible serving of a Planning Contravention Notice and, if necessary, a Breach of Condition Notice. This was unanimously agreed.
- (5) **RESOLVED** that subject to (4) above, the enforcement strategies outlined in paragraphs 15 to 130 of the report be noted and endorsed.