

Update from the Public Rights of Way & Access Service

The report by the Public Rights of Way and Access Service Manager to Kent County Council's Regulation Committee providing an update on a number of matters relating to the Definitive Map and Statement, and the Register of Common Land and Village Greens, on Thursday 28th January 2021.

Recommendation:

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

Progress with Definitive Map & Statement Section 53 Applications

1 A report is made to the Regulation Committee in September each year highlighting the number of applications received by the County Council to amend the Definitive Map and Statement and detailing:

- the number of applications requiring determination
- an estimate of the time taken between receipt of an application and the start of the determination process.

1.1 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.

1.2 Investigation involves undertaking interviews with witnesses and landowners, documentary research and consultation, amongst other things. The nature and length of the investigation is to an extent dependent on the nature of an application: Is it made on the basis of use by the public over such a time and in such a manner that public rights have been established? Or is it made on the basis of documentary evidence that demonstrates that a public right of way subsists (once a highway always a highway); or a combination of both?

1.3 Increasingly, driven by the cut off date for applications based on historic documentary evidence of the 1st January 2026, the County Council is in receipt of applications based on documentary evidence. In 2019 twenty two applications were received; in 2020 thirty seven applications were received, twenty one of which were made on the basis of documentary evidence.

1.4 We are at a point where a number of applications based purely on historic evidence are being determined, often following consideration by the Planning Inspectorate. Those applications that have resulted in the recording of rights are presenting a number of practical difficulties. Not surprisingly the public wish to be able to use these recently recorded public rights. However, many present practical difficulties, and cost, in bringing them into a condition where use is possible; land use, management and the use of buildings has changed over the decades since many of these highways were last in regular use. What may be viewed as a dry administrative purpose has a very real impact for users and land managers.

1.5 It is intended to bring a report to the June Regulation Committee setting out in detail the process followed when determining Definitive Map Modification Order applications.

1.6 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>

1.7 The Public Rights of Way and Access Service has previously highlighted the increasing level of research being undertaken by stake holders to identify and record public rights of way before the DMS cut-off date. This did create a demand and pressure to provide access to the County Council's contemporaneous highway records. The Rights of Way and Access Service, with Kent Highways Definition Team established a volunteer project to provide a summary folio of highway records to manage this demand on both services.

Impact of COVID-19

2. In the September 2020 report to the Regulation Committee an update was provided on the impact of COVID 19 on the Public Path Order making process. The same modifications to service have again been implemented during the current lockdown and the work of the Service continues with only minor constraints.

2.1 Worthy of highlighting is that the Public Inquiry to consider the Public Footpath CW80 at Whitstable Rail Crossing Extinguishment Order (Glebe Way Crossing) was able to proceed by way of a virtual Public Inquiry. Much of the Inquiry may be viewed on the Planning Inspectorate You Tube Channel at:

<https://www.youtube.com/channel/UCQqDetL1R5aRqbNm8PDViNw/featured>

This not only prevented further delay to the consideration of this matter but brought benefits. It is hoped that when the current restrictions are lifted that virtual Public Inquiries will still be viewed as the most practical option for many matters.

Applications to amend the Registers of Common Land and Village Greens

3. A Regulation Committee Member Panel has been arranged for Wednesday 24th February 2021 and will consider three Village Green applications and one application to amend the Register of Common Land.

3.1 Since the last Regulation Committee meeting in September, one new Village Green application (to register land at Kennington) has been received, as well as three applications to register land as Common Land. The latter are made by the Open Spaces Society and rely upon historical evidence that these pieces of land were erroneously omitted when the Registers of Common Land and Village Greens were originally compiled under the Commons Registration Act 1965.

3.2 Members will be aware, through previous reports, of a number of challenges to decisions to register land as Village Green that have been considered in the High Court and Supreme Court. These have had a bearing on, and delayed the determination of, applications currently being considered by the County Council. The most recent of these cases, *TW Logistics Ltd v Essex County Council* was heard by the Supreme Court on the 2nd and 3rd December. The judgement is still to be handed down, but as soon as it is received it is hoped that progress with the outstanding Village Green applications at Whitstable Beach and Herne Bay can resume.

Recommendation

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

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