

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.

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