

Update on recent Public Rights of Way cases

A report by the Head of Countryside Access to Kent County Council's Regulation Committee on Tuesday 17th May 2011.

Recommendation:

I recommend that Members receive this report

Introduction

1. As Members will be aware, the Public Rights of Way team deals with a variety of cases in relation the modification of the legal record of Public Rights of Way, known as the Definitive Map. Copies of the Registers of applications are available on the County Council's website at:
http://www.kent.gov.uk/environment_and_planning/countryside_access/definitive_map_and_statement/changing_the_network.aspx
2. The purpose of this report is to bring to the attention of the Committee to two recent cases of note.

Claimed Public Footpaths on the former Bayham Abbey Estate in Tunbridge Wells

3. Members will be aware of this ongoing and longstanding case which was first dealt with by the Committee at a Member Panel meeting on 5th April 2005. At that meeting, it was resolved to reject an application made by the Ramblers' Association under provisions in the Wildlife and Countryside Act 1981 to record on the Definitive Map several Public Footpaths running across the Bayham Abbey Estate. Following a successful appeal against the County Council's decision, Definitive Map Modification Orders were made in relation to two long distance route across the Estate. Objections to the Orders were made by the landowners. The County Council, with this Committee's approval, retained a neutral stance at the subsequent Public Inquiry which was held in December 2010. The Public Inquiry was chaired by an Inspector appointed by the Planning Inspectorate and heard a considerable amount of evidence both in support of the application and in objection to it.
4. The Inspector's decision was issued on 1st April 2011. The Inspector found that there was insufficient evidence of use throughout the relevant twenty year period to record the routes as Public Footpaths. He also concluded that, due to various obstacles to use (including a missing bridge and locked gates), it was not physically possible for the public to have used the routes without interruption. Therefore, the Inspector refused to confirm the Definitive Map Modification Orders and rejected the application.
5. Now that a final decision has been taken and all parties have been informed accordingly, the matter has now been concluded and no further action is required by the County Council. The only right of appeal against the Inspector's decision is by way of an application for Judicial Review in the High Court (within three months of the date of the decision). It is not known at this stage whether it is the intention of the Ramblers' Association to appeal against the decision.

Proposed Diversion of Public Footpath SD284 at West Kingsdown

6. This application was considered by members of a Regulation Committee Panel on the 29th January 2010. A site visit was held and, during the more formal meeting, Members were addressed by the landowner and representatives of the two objectors, the Parish Council and the Ramblers Association. Despite the objections, it was agreed that the County Council should make a Public Path Diversion Order. Following the making of this Order, formal objection was lodged by the two objectors. There were no other duly made objections from any other source.
7. As a result of further consideration, the Parish Council withdrew its objection. However, the matter had to be referred to the Planning Inspectorate for resolution because the Ramblers' Association refused to withdraw its objection. The Planning Inspectorate has decided to hold a public Hearing, as the Ramblers' Association representative has exercised his right to be heard.
8. The Ramblers Association Kent Executive has now withdrawn the objection lodged on its behalf. However, the County Council has been informed by the Planning Inspectorate that the Hearing, programmed for 5th July 2011, still has to continue because the representatives who objected on behalf of the Ramblers Association and the Parish Council wish to maintain those objections in their own right. The County Council has written to the Planning Inspectorate expressing dissatisfaction at this turn of events but to no avail.

Recommendation

9. I RECOMMEND Members receive this report.

Contact Officer:

Mr. Chris Wade

Public Rights of Way Principal Case Officer

Tel: 01622 221511