

Update from the Definitive Map Team

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee on Tuesday 2nd September 2014.

Recommendation:

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

Progress with Definitive Map Team applications

1. Members requested that a summary of the current position of applications to amend the Definitive Map and Statement (DMS) be provided annually to the Regulation Committee. A copy of the Register of Section 53 applications to amend the DMS and the Register of applications to divert or extinguish public rights of way is therefore attached at **Appendix A**. The Registers are also available on line at:-

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

2. The Registers are updated on a regular basis to reflect progress with cases.
3. During the period April 2013 to March 2014, sixteen Public Path Orders and twelve Definitive Map Modification Orders were confirmed. Two routes have been created by agreement with the landowners and one Order has been confirmed to facilitate the safer crossing of a railway.
4. There are currently forty one unallocated diversions/extinguishments and twenty one unallocated section 53 applications. The average wait between receipt of an application and allocation to an officer is currently two years for diversions/extinguishments and two and a half years for Section 53 applications.
5. Orders with unresolved objections are determined by the Secretary of State. During the above period, there has been one Public Inquiry (relating to a claimed path at Snodland) and one Public Hearing (relating to the diversion of Public Footpaths KH125 and KH130). A further two cases have been submitted to the Planning Inspectorate for resolution, one of which is being determined by Written Representations (relating to the diversion of Public Footpaths KM42 & KM43). A Public Inquiry will be held to determine the other case (relating to a claimed path at Marden).
6. The County Council has entered into Service Level Agreements (SLA) with five District Councils (Ashford, Dartford, Swale, Tonbridge & Malling & Tunbridge Wells) to process their Town & Country Planning Act Applications to divert and stop up rights of way in order to enable development to take place. Since entering into these Agreements, twenty applications have been received, ten from Ashford, three from Tunbridge Wells, two from Dartford, three from Swale and two from Tonbridge & Malling. Of the twenty applications, ten have been completed and a further three are awaiting certification following the completion of works. The generation of income from these applications enables us to retain

expertise within the team. Discussions are also taking place with Sevenoaks District Council as they are considering entering into an SLA.

De-regulation Bill

7. The De-regulation Bill is currently progressing through the House of Lords with the Committee stage due to take place on 21 October 2014.

8. Key proposals of the De-Regulation Bill which will affect PROW & Access are:

Section 53 Applications -

- It introduces a preliminary sift (basic evidential test) for Section 53 applications so that Local Authority's are relieved of the burden of dealing with poor or spurious applications (this sift must be completed within 3 months of receiving the application).
- It will be the responsibility of the Local Authority to approach landowners to inform them of an application, rather than applicants, but only when an application passes the preliminary sift.
- It enables a Local Authority to negotiate an alternative route with the landowner before recording the way – this is to alleviate the impact of “discovered” ways. An Authority can make a Special Order i.e. a diversion Order, an Order altering the width of the path or an Order imposing a new limitation or condition (this must occur within 6 months of notifying the landowner of the application).
- It provides for a recourse to a local Magistrates Court rather than the Secretary of State where a Local Authority has failed to carry out a preliminary sift (within 3 months of receipt) or determine an application that has passed the sift (within 12 months of receipt).
- It enables a Local Authority to disregard irrelevant appeals and objections rather than having to submit them all to the Secretary of State.
- It creates a fast track procedure for correcting minor administrative errors on the definitive map and statement.
- It removes the reasonably alleged to subsist element from Section 53 – would only make an Order if the claimed route subsists.
- It reduces the requirement for advertising rights of way Orders in newspapers.
- It will bring into force the 2026 cut off date i.e. all unrecorded rights of way created before 1949 will be extinguished immediately after 1 January 2026 – subject to certain exceptions.
- It provides for Local Authority's to designate a right of way for protection during a short window after the cut-off – one year period.
- It preserves routes identified on the list of streets/local street gazetteer as publicly maintainable or as private streets carrying public rights.
- It preserves rights over routes that are subject to a pending application.

Diversion/Extinguishment applications, the Act will:-

- Correct flaws in existing legislation that provides for a statutory “right to apply” for an extinguishment or diversion of an existing right of way – previously only applied to an owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses.

- Enable an Authority to charge the full cost of processing an Order, including any work carried out after a case is submitted to the Planning Inspectorate.
- Establish a presumption in favour of diverting or extinguishing a right of way which passes through a garden, a working farmyard or forestry yard or other operational businesses or working industrial premises.

Other:-

- Provide for landowners to apply for gates on byways for the purposes of preventing the ingress and egress of animals.

Antisocial Behaviour, Crime & Policing Act 2014

9. This Act received Royal Assent on 13 March 2014 and the commencement of the Act is likely to begin later in the year.

This legislation replaces Gating Orders with a Public Spaces Protection Order and the responsibility for making such Orders will rest with the District Councils.

The Act states that a Local Authority may make a Public Spaces Protection Order if satisfied on reasonable grounds that two conditions are met.

The first condition is that –

- a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
- b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

The second condition is that the effect, or likely effect, of the activities –

- a) is, or is likely to be, of a persistent or continuing nature,
- b) is, or is likely to be, such as to make the activities unreasonable, and
- c) justifies the restrictions imposed by the notice.

In Kent there are currently two Gating Orders (Henley Fields and Ashford Church yard) and these will automatically convert to a Public Spaces Protection Order (PSPO) after three years. Once converted each PSPO and any new PSPO must be reviewed every three years and may be further extended up to a period of three years.

District Councils will be required to notify the County Council but there is no duty to consult, although it is hoped that the County Council's views will be taken into account before a decision is made.

Detailed Guidance is crucial to determine exactly how the above legislation will be applied in practice

Recommendation

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

Background documents:

Appendix A – Registers of applications

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