

Update from the Public Rights of Way and Access Service – Definitive Map Team

A report by the Public Rights of Way and Access Service Manager to the Regulation Committee on Tuesday 1st September 2015.

Recommendations:

I recommend that:

- I. Members consider this report and note its content.
 - II. Members approve the continued operation of the Gating Orders at Henley Fields and Ashford Church Yard.
 - III.
-

Progress with Definitive Map Team 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. The summary will also provide detail about applications to amend the Town and Village Green register and other matters relating to the work of the Definitive Map Team.

2. Section 53 Applications

Any person may make an application under section 53 of the Wildlife & Countryside Act 1981 to the County Council, as Surveying Authority, for a public right of way to be added, upgraded or downgraded, or deleted. The County Council has a duty to investigate every application it receives. Investigation involves undertaking interviews with witnesses and landowners, documentary research and extensive consultations, amongst other things. It is our policy to deal with these applications in order of receipt except in circumstances, such as where the physical existence of the claimed route is threatened by development, when the case would be accelerated.

2.1 Between April 2014 and March 2015 nine applications were determined, nine Orders were made and four were confirmed.

There are currently 22 unallocated applications with a backlog of approximately 2½ years. Nine applications have been received so far this year.

The schedule of applications, which is updated quarterly, can be located on the County Council website at:

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

3. Statutory Deposits under section 31(6) of the Highways Act 1980 and/or section 15A(1) of the Commons Act 2006

3.1 This is a means by which a landowner can protect his land against any or further public rights of way from being recorded or a village green from being registered.

The implementation of The Growth & Infrastructure Act 2013, changed the process for lodging a deposit map and statement.

3.2 The main changes brought about by the 2013 Act are:

- a new application form;
- the inclusion of a statement which brings to an end any period where lawful sports and pastimes may have been enjoyed, and thus preventing any applications to register a town or village green on the land in question in the future;
- a statement of truth replacing the previous statutory declaration;
- the time between making further declarations has increased from within every 10 years to 20 years;
- the ability for County Councils to charge a fee for the service, which includes the making of a notice relating to the application and publicising of the notice on the County Council's website and at site.

41 applications were received between April 2014 and March 2015.

4. Applications to divert or extinguish public rights of way.

As part of its rights of way functions, the County Council also deals with applications from landowners to close or divert 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 closing (or 'extinguishing') a right of way is considerably narrower, and it generally only be possible to do this in cases where the right of way is considered to be 'unnecessary' or 'not needed for public use'.

4.1 On average, the County Council receives around 30 such applications each year, the vast majority seeking diversions of rights of way, and those applications are normally dealt with in order of receipt.

4.2 The County Council also deals with applications under the Town and Country Planning Act 1990 to close or divert public rights of way that are affected by development. This work is undertaken on behalf of some District Councils and also in respect of its own planning functions. So far this year, 8 such applications have been received.

4.3 A copy of the current schedule of applications is available on the County Council's website at:

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

4.4 Currently, 33 diversion or closure applications are being processed. Due to the volume of applications received, there is a large backlog and there are currently a further 49 applications in the queue awaiting allocation to a member of the team. This means that there is a waiting time of approximately 2 years between the submission of an application and work commencing on it.

4.5 The backlogs for both applications to 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 control available on the number of applications to amend the DMS that are received in any year. The number of applications can exceed the resource available to determine them. That said the backlogs are relatively stable and good progress is being made.

5. Applications to register Village Greens

Kent County Council is the 'Commons Registration Authority' responsible for holding the Registers of Commons Land and Village Greens. One of the key tasks arising from this responsibility is the determination of applications to register new Village Greens under section 15 of the Commons Act 2006.

5.1 As Members will be aware, Officers have been working hard to clear the once considerable backlog of such applications and, as a result of this, there are now just four applications outstanding:

- The Downs at Herne Bay;
- Chaucer Fields at the University of Kent at Canterbury;
- Whitstable Beach; and
- land at Cryalls Lane at Sittingbourne.

5.2 A Public Inquiry was held earlier this year in relation to the application at Chaucer Fields at Canterbury, and the Inspector's report has now been received. It is anticipated that the matter will be referred back to a Member Panel either later this year or early next year.

5.3 Arrangements are also currently under way to hold a Public Inquiry into the Whitstable Beach application (as approved at the Member Panel meeting on 19th May 2015). It is anticipated that this will be held, depending on the availability of the parties involved, early next year. Further details will be published nearer the time.

6. Gating Orders.

The Antisocial Behaviour, Crime and Policing Act 2014 has the effect of replacing Gating Orders with Public Spaces Protection Orders; the responsibility for making such orders falls to District and Borough Councils. The provisions in respect of gating orders are to be introduced by regulations; these have yet to be published.

6.1 Responsibility to review and extend the two existing gating orders in Kent (Henley Fields and Ashford Church Yard) will pass to Ashford Borough Council on introduction of the regulations.

6.2 The two existing gating orders in Kent have recently been reviewed. The orders continue to prove effective in preventing antisocial and criminal behaviour. The crime and antisocial behaviour statistics for both areas are included as **Appendix 1**. It is recommended that the orders continue in force until such time as responsibility for them passes to Ashford Borough Council.

7. Legislative Update

Deregulation Act 2015. The Deregulation Act received Royal Assent on the 26 March 2015. The Act introduces a considerable number of amendments to existing legislation relating to the recording and diversion of Public Rights of Way with the intention of simplifying the administration of this area of law. The changes to the existing legislation were detailed in last year's Update Report; provided as **Appendix 2**.

7.1 It is currently intended that the new provisions will be introduced through regulations in April 2016. The potential impacts on the Public Rights of Way and Access Service will be better understood when the regulations are published.

Recommendations.

8. I recommend that:

- I. Members consider this report and note its content.
- II. Members approve the continued operation of the Gating Orders at Henley Fields and Ashford Church Yard

Background documents:

Appendix 1: Crime and antisocial behaviour statistics for Henley Fields and Ashford Churchyard.

Appendix 2: Update for the Definitive Map Team 2nd September 2014.

Contact Officer

Graham Rusling – Public Rights of Way and Access Manager
Tel: 03000 413449 E-mail: graham.rusling@kent.gov.uk