

Update from the Definitive Map Team

A report by the Definitive Map Team Leader to Kent County Council's Regulation Committee on Tuesday 12th September 2016.

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.

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 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 During the period April 2015 to March 2016, 8 applications were determined, 3 were declined, 6 Orders were made and 6 were confirmed. There are currently 23 unallocated applications resulting in a backlog of approximately 2½ years. Six applications have been received so far this year.

2.2 There are 3 cases currently with the Planning Inspectorate awaiting determination:

i. 2 of which are Appeals against the County Council's refusal to make an Order (for claimed paths at Sevenoaks) and

ii. 1 for a claimed path at Charing where objections were received. A Public Inquiry took place on 6th September to hear the objections and a decision will be issued in due course.

2.3 The Schedule of Applications, which is updated quarterly, 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>

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 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

is generally only possible to do this in cases where the right of way is considered to be 'unnecessary' or 'not needed for public use'.

3.1 During the period April 2015 to March 2016, 19 Public Path Orders have been confirmed (including one to facilitate the safe crossing of a railway), 3 routes have been created through agreement with the landowner and 27 applications are currently being processed. There are fifty six unallocated diversions/extinguishments resulting in a backlog of approximately 2 years between the receipt of an application and allocation to an officer.

3.2 During the above period, 1 Order (for the diversion of Footpath CC34) has been referred to the Planning Inspectorate for resolution and this is being determined through the written representation procedure with a decision expected in December.

3.3 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.

3.4 The County Council also deals with applications 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 some District Councils (namely Ashford, Dartford, Gravesham, Sevenoaks, Shepway, Swale, Tonbridge & Malling & Tunbridge Wells and the Ebbsfleet Development Corporation) and also in respect of its own planning functions. The County Council is currently processing 10 such applications.

3.5 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>

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

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.

4.1. During the period April 2015 to March 2016, 18 Deposits have been received.

Legislative Update

4. Deregulation Act 2015 - It was reported at the last annual update that the regulations would be introduced in April 2016, unfortunately these have been delayed and at this stage Defra have not given a date but stated that they would be published later this year. The potential impacts on the Public Rights of Way & Access Service will be better understood when the regulations are published.

CON 29 Forms for property searches

6. As of the 4th July the Law Society has issued revised forms for property searches (CON29 – questions asked in respect of all searches and CON29O optional search questions). The aim of the revised forms is to improve the quality and consistency of the information provided by local authorities when members of the public and business are buying or leasing properties. The questions in relation to public rights of way have been moved from the optional CON 290 to the CON 29 form, meaning that they will be asked every time a search is completed. The new questions in relation to PROW are as follows:-

Is any public right of way which abuts on, or crosses the property, shown on a definitive map or revised definitive map?

Are there any pending applications to record a public right of way that abuts, or crosses the property, on a definitive map or revised definitive map?

Are there any legal orders to stop up, divert, alter or create a public right of way which abuts, or crosses the property not yet implemented or shown on a definitive map?

6.1 The above questions seek information about existing and pending PROW which might cross or run alongside the boundary of the specified property.

6.2 The question surrounding Common Land and Town or Village Greens remains part of the optional form (CON 290) but in addition also includes a question about landowner deposits under section 31(6) of the Highways Act 1980 and section 15A of the Commons Act 2006.

6.3 A portal has been developed to enable the questions to be answered by the District and Borough Council Land Search Teams in the first instance. Searches relating to affected properties are passed to the County Council for response.

Applications to register Village Greens

7. There are currently three applications under section 15 of the Commons Act 2006 outstanding, namely:

The Downs at Herne Bay (VGA614);

Whitstable Beach (VGA658); and

Land at Cryalls Lane at Sittingbourne (VGA666).

7.1 A further two applications have been received this year (involving land at Hythe Green and land at Grove Park Avenue, Sittingbourne) which have not yet been formally accepted for investigation, pending the outcome of enquiries with the relevant planning authorities as to whether any 'trigger events' apply to the lands in question (i.e. existing development proposals which would preclude the making of a Village Green application). A further application involving land at Hospital Field at Brabourne has been returned to the applicant on the basis that it appears to be affected by proposed development and, as such, cannot be considered for Village Green status.

7.2 A Public Inquiry into the application to register Whitstable Beach as a Village Green began in April and sat for seven days, but it was not possible to get through the very large volume of evidence in the allotted time and the Inquiry was therefore

adjourned to resume on 3rd October 2016 for a further six days. It will take place at the Marine Hotel at Whitstable. Once all of the evidence has been completed, the Inspector (a Barrister appointed by the County Council) will prepare a report setting out her findings and recommendation to the County Council, which will then be referred to a Regulation Committee Member Panel for a final decision. That final decision is not expected until at least next Spring.

Recommendation

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

Contact Officer:

Laura Wilkins - Definitive Map Team Leader

Public Rights of Way & Access Service

Tel: 03000 413480 - Email: laura.wilkins@kent.gov.uk