

## Update from the Definitive Map Team

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A report by the Public Rights of Way and Access Manager to Kent County Council's Regulation Committee on Thursday 28th September 2017.

### **Recommendation:**

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

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### **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 2016 to March 2017, 5 applications were determined, 2 were declined and 5 Orders were made and confirmed. There are currently 31 unallocated applications resulting in a backlog of approximately 2½-3 years. There has been a marked increase in the number of applications received due to the fact that User Groups are preparing for the 2026 cut-off date (please see below for more detail on this). During 2016, 9 applications were received and already this year, 12 have been received and many more are expected.

2.2 There is 1 case currently with the Planning Inspectorate awaiting determination:-

- Claimed Bridleway at Kingsnorth (Steeds Lane) – Order made, objections received on the grounds that the way should be of a higher status. The Order has been submitted for non-confirmation on the basis that the route should be shown as a full highway and therefore not something that can be shown on the DMS.

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 2016 to March 2017, 29 Public Path Orders have been confirmed (including 2 to facilitate the safer crossing of a railway), 2 routes have been created through agreement with the landowner and 3 have been created by Order and 27 applications are currently being processed. There are 57 unallocated diversions/extinguishments resulting in a backlog of approximately 2-2<sup>1/2</sup> years between the receipt of an application and allocation to an officer.

3.2 During the above period, 2 Orders (for the diversion of CC34 and SD252) were referred to the Planning Inspectorate for resolution and both were confirmed one following the written representation procedure and the other following a Public Hearing.

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. Regrettably the backlogs have grown since the last update, there has been an increase in the number of Town & Country Planning Act applications which are given priority over other areas of work and as stated above we have seen an increase in the number of section 53 applications. In order to try and reduce the backlog for Highways Act applications, we have been trialling the use of consultants carrying out this work. Surrey County Council is currently processing 3 applications on behalf of the County Council and whilst this has meant that an additional 3 applications have been allocated, it has still involved much officer time in carrying out site visits, creating templates, providing them with all the information they need, checking Reports and Orders etc. We will therefore have to review the process and determine whether or not we should continue with this arrangement.

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 the majority of the District Councils (namely Ashford, Canterbury, 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 21 such applications, although with 10 of these applications, the Orders have been made and confirmed and are awaiting certifications following the completion of the works on site.

3.5 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/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 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 2016 to March 2017, 37 Deposits have been received, which is an increase of 19 from the previous year.

### **Legislative Update**

5. Deregulation Act 2015 - It was reported at the last annual update that the regulations would be published towards the end of 2016; unfortunately this did not happen and at this stage Defra have not given a date of when they will be published. Indeed, they have indicated that they will not be providing possible dates for when they will be implemented. The potential impacts on the Public Rights of Way & Access Service will be better understood when the regulations are published. However, the main user groups, i.e. the Ramblers and the British Horse Society are preparing for the regulations and in particular the bringing into force of the 2026 cut-off-date. This is where 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 – a 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.

5.1. The British Horse Society has already made a number of applications and many more are expected. The Ramblers are putting in place a process for their volunteers to start researching what potential applications they may submit. The backlog for section 53 applications has increased in the last year and is likely to increase further and therefore this will have to be considered when drafting the new Statement of Priorities.

### **Fees and Charges**

6. Fees and Charges for rechargeable Public Rights of Way and Access activity have recently been reviewed and were the subject of a report for decision at the Environment and Transport Cabinet Committee on 21 September 2017. A copy of the Report may be found at: -

<https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=831&MId=7546&Ver=4>

### **Public Footpath ZF5 at Faversham**

7. Following a decision of the Regulation Committee Member Panel on 22 February 2016, Orders were made to extinguish sections of Public Footpath ZF5 and to create a continuous creek side access between Crab Island and Ham Marshes. Following objections and representations to those Orders, they have been referred to the Secretary of State for determination and a Public Inquiry is scheduled to take place on 16 - 19 January 2018.

## **Applications to register Village Greens**

8. There are currently 11 outstanding applications under section 15 of the Commons Act 2006, of which 5 of these are scheduled to go before a Regulation Committee Member Panel on 23 October 2017.

## **Recommendation**

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

## **Contact Officer:**

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