

## **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 Wednesday 26th September 2018.

### **Recommendation:**

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

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### **Progress with Definitive Map & Statement 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.

### **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, to amend the DMS to add, upgrade, downgrade, or delete a Public Right of Way. The County Council has a duty to investigate every application it receives. Investigation involves undertaking interviews with witnesses and landowners, documentary research and extensive consultation, amongst other things. It is our policy to deal with these applications in order of receipt except where:

the physical existence of the claimed route is threatened by development or,  
the resolution of an application would enable the County Council to properly assess or manage public safety or

the claimed route may result in a significant improvement to the network

In such instances a case may be accelerated.

2.1 During the period April 2017 to March 2018, 8 applications were determined, of which 6 were declined and 2 Orders were made and confirmed. There are currently 34 unallocated applications and a current backlog of approximately 3 years. The number of applications received fluctuates with 18 applications being received in 2017 and only 4, to date, in the current year.

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

Claimed Bridleway at Kingsnorth (Steeds Lane). 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. An Inspector having reviewed the evidence has determined that it should in fact be a Restricted Byway and the Order has been amended and advertised: objections have been received to this. This is now being progressed through the written representation procedure.

2.3 The Schedule of Applications is updated on a regular basis and 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 divert or extinguish 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 'unnecessary' or 'not needed for public use'.

3.1. During the period April 2017 to March 2018, 27 Public Path Orders have been confirmed (including 1 to facilitate the safer crossing of a railway), 1 route has been upgraded through agreement with the landowner and 1 has been created by Order. 47 applications are currently being processed. There are 59 unallocated diversions/extinguishments resulting in a backlog of approximately 2<sup>1/2</sup> years between the receipt of an application and allocation to an officer.

3.2. There are 2 cases currently with the Planning Inspectorate awaiting determination: -

- Diversion of ER80 & ER81 at Shephedswell, this is to be determined through the written representation process.
- Extinguishment and creation of a new length of DR46 and the diversion of DR47/SD47 at Darenth and Horton Kirby & South Darenth.

3.3. The backlogs for applications to both 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 ability to limit 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 1990 applications. These are given priority over other areas of work.

3.4. To try and reduce the backlog for Highways Act 1980 applications, we have been trialling the use of consultants to carry out this work. Surrey County Council (SCC) has processed 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. However, having reviewed the process, there is still benefit in SCC taking on the applications: they have been able to work within our existing charging regime and currently have capacity to continue with the arrangement. It has therefore been decided to continue with the arrangement and a further 4 applications have recently been allocated to them. We will of course continue to monitor and review this working arrangement.

3.5. The County Council also deals with applications made 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 Ashford, Canterbury, Dartford, Gravesham, Folkestone and Hythe, Sevenoaks, Swale, Tonbridge & Malling & Tunbridge Wells Councils and the Ebbsfleet Development Corporation. A small

number are processed in respect of our own planning functions. The County Council is currently processing 29 such applications. In 18 of the cases the Orders have been made and confirmed and are awaiting certification following the completion of the works on site.

3.6. The Schedule of Applications, which is updated on a regular basis, 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 landowners can protect their land against any, or further, public rights of way or a village green from being registered as a result of unchallenged public use.

4.1. During the period April 2017 to March 2018, 29 Deposits have been received, a decrease of 8 from the previous year.

### **Legislative Update/Lost Ways Project**

5. Deregulation Act 2015 – The Deregulation Act came into force on 27<sup>th</sup> March 2015, however the elements in relation to PROW have not yet come into force as we are awaiting the associated regulations and guidance. The latest information from DEFRA is that the regulations should be introduced in the summer of 2019 subject to parliamentary time.

5.1 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.

5.2. In order to deal with what is likely to be a very substantial increase in the number of applications to modify the DMS and to facilitate stakeholder demand to access the County Councils records, the Service has recruited a small team of volunteers. The volunteers undertake initial research of the County Council's public rights of way and highways records in respect of prospective applications and status enquiries. It is hoped that in doing this the pressure on the Definitive Map Team and Highways Definition Teams that would result from numerous enquiries will be managed and that any applications that are subsequently made will be fewer in number and of higher quality.

## **Applications to register Village Greens**

6. There are currently 10 outstanding applications under section 15 of the Commons Act 2006, of which 2 of these are scheduled to go before a Regulation Committee Member Panel in November. Public Inquires are scheduled for 2 applications, one to take place in October and the other in February/March next year and 1 application is currently out to consultation.

## **Recommendation**

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

### **Contact Officer:**

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