

Update from the Public Rights of Way & Access Service

A report by the Definitive Map Team Leader to Kent County Council's Regulation Committee on Wednesday 25th September 2019.

Recommendation:

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

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 2018 to March 2019, 6 applications were determined, of which 3 were declined, 1 Order was made and confirmed and 2 Orders were made, and objections were received. There are currently 47 unallocated applications and a current backlog of approximately 4 years. The number of applications received fluctuates with 7 applications being received in 2018 and already 18 have been received in the current year.

2.2 There are 5 cases with the Planning Inspectorate awaiting determination, 2 of these are where the County Council declined to make an Order and the applicant has appealed that decision. The other 3 cases are where objections were received to the making of an Order.

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 2018 to March 2019, 24 Public Path Orders have been confirmed (including 1 to facilitate the safer crossing of a railway). 38 applications are currently being processed. There are 56 unallocated diversions/extinguishments resulting in a backlog of approximately 3 years between the receipt of an application and allocation to an officer.

3.2. There are 3 cases with the Planning Inspectorate awaiting determination: -

- Extinguishment and creation of a new length of DR46 and the diversion of DR47/SD47 at Darenth and Horton Kirby & South Darenth.
- Extinguishment of Public Footpath KM250
- Diversion of Public Footpath SR22 at Shoreham

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.

3.4 Within Schedule 14 of the Wildlife and Countryside Act 1981 there is provision for an applicant to apply to the Secretary of State if their application has not been dealt with within 12 months of receipt. The County Council has received Notice that an applicant has applied to the Secretary of State. The Secretary of State will in due course consider this request and can direct the County Council to determine the application within a given time. It is predicted that more applicants may consider this course of action as the backlog continues to increase.

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, Dover, Gravesham, Folkestone and Hythe, Sevenoaks, Swale, Tonbridge & Malling & Tunbridge Wells Councils and the Ebbsfleet Development Corporation. Since the last update Dover have signed a Service Level Agreement leaving just Maidstone and Thanet that still process their own applications. A small number of applications are also processed in respect of our own planning functions. The County Council is currently processing 38 such applications. In 21 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 2018 to March 2019, 24 Deposits have been received, a decrease of 5 from the previous year.

Legislative Update

5. Deregulation Act 2015 – The Deregulation Act came into force on 27th March 2015, however the elements in relation to PROW have still not come into force as we are awaiting the associated regulations and guidance. The latest information from DEFRA was that the regulations should have been introduced this summer, but this was subject to parliamentary time. No further updates have been received and there is therefore no indication as to when the Regulations will be published.

5.1 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 It is interesting to note that of the 47 unallocated section 53 applications, 21 are based upon pre-1949 historical evidence with the remaining ones being based predominately on user evidence. The backlogs referred to above are currently worked out from when the next application to be allocated was submitted. This approach has worked well to date. However, as the number of applications received each year is set to increase, it will be necessary to review the Priority Statement and consider whether greater priority should be given to section 53 applications which are predominately based upon user evidence.

5.3 The PROW & Access Team is in the process of recruiting an additional Definitive Map Officer which it is hoped will help tackle the backlogs.

Applications to register Village Greens under section 15 of the Commons Act 2006

6. So far this year, five applications to register land as a Village Green have been determined (of which three were rejected, one was registered as a Village Green and one is to be referred to the Planning Inspectorate). A further eight applications remain outstanding, of which three will be referred to the Regulation Committee Member Panel for determination imminently.

6.1 A Public Inquiry was held earlier this year into the application to register Hospital Field at Brabourne as a Village Green; the Inspector's report is currently with the parties for comment and the matter will be put before the Member Panel for

decision later in the year. The County Council is still awaiting the Inspector's report in respect of the Village Green applications at Whitstable Beach and The Downs (Herne Bay), both of which have been legally complex and affected by changes in case law.

Recommendation

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

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