

Update from the Public Rights of Way & Access Service

A report by the Public Rights of Way and Access Service Manager to Kent County Council's Regulation Committee on Thursday 24th September 2020.

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 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 2019 to March 2020, 9 applications were determined of which 2 were declined, 2 Orders were made and confirmed and 5 Orders were made and are awaiting a decision. 24 cases have been allocated and are under investigation, a substantial increase on previous years. There are currently 59 unallocated applications. The number of applications received fluctuates with 7 applications being received in 2018, 22 applications in 2019 and already 27 have been received in the current year. This large increase in applications has an impact on the backlog. The next application to be allocated was received in January 2017 resulting in a backlog of just under 4 years. However, when considering that on average, 8-10 applications have been determined each year, this means that in reality the current backlog has increased to 5 - 6 years.

2.2 There are 2 cases with the Planning Inspectorate awaiting determination as 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 extinguishing (stopping up) 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 2019 to March 2020, 18 Public Path Orders have been confirmed. 47 applications are currently being processed. There are 61 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 4 cases with the Planning Inspectorate awaiting determination: -

- Diversion of Public Footpath ZR408 at Selling
- Extinguishment of Public Footpath CW80 at Whitstable (Rail Crossing application)
- Extinguishment/creation of Public Footpath ER273 at Ringwould with Kingsdown
- Diversion of Public Footpaths SR563, SR568 and SR622 at Hever & Edenbridge.

3.3. 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. A small number of applications are also processed in respect of our own planning functions. During the period April 2019 to March 2020, 15 Public Path Orders have been confirmed/certified. There are 26 cases where Orders have been made and confirmed and are awaiting certification following the completion of the works on site.

3.4. 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 2019 to March 2020, 23 Deposits have been received, a decrease of 1 from the previous year.

Backlogs

5. 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.

5.1 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 received two Notices that an applicant had applied to the Secretary of State in the last 12 months. The Secretary of State considered the requests and, in both cases, directed the County Council to determine the applications within a given time. It is predicted that more applicants may consider this course of action as the backlog continues to increase.

5.2 The PROW & Access Team have in the last year filled a vacancy and recruited an additional Public Rights of Way Officer. It is hoped that this additional resource will help tackle the backlogs. Both Officers have been trained and are processing Highways Act Public Path Orders, Temporary Traffic Regulation Orders and CON29 searches but due to the Corona virus outbreak, training in the processing of Town & Country Planning Act Orders and section 53 applications has been delayed and is not likely to take place until next year. It has however freed capacity elsewhere in the team.

5.3 Given the impending legislative changes, highlighted below, and the 2026 cut-off date the numbers of applications for Definitive Map Modification Orders will continue to increase at an accelerating rate. This reflects with the situation in other Surveying Authorities. It is hoped that in increasing the capacity of the team that increases to the backlogs will at least be slowed.

Legislative Update

6. 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 is that a new officer has been appointed and the Regulations are being drafted, however we have received no further updates and there is no indication as to when the Regulations will be published.

6.1 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.

6.2 It is interesting to note that of the 59 unallocated section 53 applications, 29 are based upon pre-1949 historical evidence with the remaining ones being based predominately on user evidence.

Impact of COVID-19

7. The Corona virus outbreak has had an impact on the work of the Definitive Map Team. For 3 months from 23 March 2020, no Orders were made or advertised. New cases could not be started that required a site visit due to the restrictions which were put in place by the Government. In the last 2 months we have once again started to make and advertise Orders. It is, however, not possible to strictly comply with the legal requirements, for the advertising and publication of Orders due to County Council offices and many District Council offices being closed to the public. In all cases. Orders should be on display, available for inspection and copies available to the public at a reasonable cost at a Council office in the area to which the Order relates . We have sought advice on publicising Orders from DEFRA; no response was received. The Planning Inspectorate were willing to provide guidance as to practical steps that may be taken but could provide no guarantee as to the view that Planning Inspectors or the Courts may take on those measures.

7.1 As we could not feasibly delay Order making for much longer, a decision was taken to progress Orders. In order to mitigate any risk of the public not being able to view a copy of an Order at a Council Office copies of the Notice and Order have been made available on the County Council's website and an extra line has been added to Public Notices informing the public that they may also obtain a copy by contacting the case officer. This is in addition to placing a copy of the Notice on site and in the Kent Messenger, It is therefore felt that we have taken a more than reasonable approach and no-one will be disenfranchised by the offices not being open to the public

7.2 Other impacts of the outbreak are: -

- A loss of income due to case work not being progressed, fewer Traffic Regulation Orders and search requests were submitted in the first quarter although this has recovered strongly in quarter 2.
- An increase in section 53 applications as user groups have had more time to carry out the research and compile the applications. Since lockdown began 20 applications have been received.
- Delay in staff development as referred to above.

Applications to amend the Registers of Common Land and Village Greens

8. There are currently six applications outstanding to register land as a new Village Green under section 15 of the Commons Act 2006. Two of those, at Whitstable Beach and Herne Bay, are on hold pending the outcome of a case currently awaiting a hearing before the Supreme Court (postponed due to COVID-19), the judgement for which may have ramifications on the County Council's final decision in respect of those cases. Two further applications, at Snowdown and Maidstone, will be referred to the next meeting of the Regulation Committee Member Panel for decision and the remaining two, at Westbere, are either under investigation or awaiting further information from the applicant.

8.1 In addition to the applications to register new Village Greens, an application has been received to transfer the ownership of some rights of common at Higham Common, which will be referred to the next Panel meeting.

7.2 Finally, a large application to register 16 pieces of Common Land in the Sevenoaks area was received from the Open Spaces Society at the end of last year, the consultation for which was published in March¹. The application is based upon historic evidence which, it is alleged, shows that the piece of land in question were erroneously omitted from the Register of Common Land when it was originally prepared in the early 1970s. Unfortunately, progress has been delayed due to the closure (as a result of COVID-19) of the Kent History and Library Centre, at which the historical documentation is stored. However, it is understood that the documentation is now available for viewing (by appointment) which will enable work on this application to continue.

Recommendation

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

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¹ The consultation is still available online (for information only) at:
<https://kccconsultations.inconsult.uk/consult.ti/CAA19/consultationHome>