

From: **Clair Bell, Cabinet Member for Community and Regulatory Services**

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To: **Growth, Economic Development and Communities Cabinet Committee - 6 November 2024**

Subject: **Public Rights of Way and Access Service - Overview**

Decision No: N/A

Classification: **Unrestricted**
Electoral Division: All

Summary: The Growth, Economic Development and Communities Cabinet Committee requested a “deep dive” into the Public Rights of Way and Access Service. This paper provides an overview of the Service.

Recommendation(s):

Growth, Economic Development and Communities Cabinet Committee is asked to consider this report and note its contents.

1. Introduction

- 1.1 The Public Rights of Way (PRoW) network extends to 4318 miles (6915Km), representing 44% of Kent’s highway network. With a small number of exceptions it is publicly maintainable highway. The network provides extensive opportunities for leisure and active travel. Its use contributes significantly to health and well-being and quality of life of Kent’s residents and visitors, and to the rural economy.
- 1.2 The contribution that PRoW make to the quality of life and economy of Kent and the strategy for the management of the network are set out in detail in the Rights of Way Improvement Plan adopted by the County Council in 2018 and its accompanying evidence base. The *Appendix A*. The Plan was adopted by the County Council following consideration by the Environment & Transport Cabinet Committee in 2018.
- 1.3 The Operational Management policies for the delivery of the Rights of Way and Access Service are set out in Countryside Access Improvement Plan 2013 – Operational Management. **Appendix B**. Please note that this was the last occasion on which policies were drawn together in one comprehensive document. While the majority of the policies are little changed some have evolved in response to legislative and regulatory change or changes in priority or resources.

2. Background

- 2.1 The County Council is the:

- a) Surveying Authority for Kent and responsible for the production of the Definitive Map and Statement (DMS) for Kent (the legal record of PRoW) and keeping the map under continuous review.
 - b) Registration Authority responsible for maintaining the register of commons and village greens.
 - c) The Highway Authority for Kent responsible for the assertion and protection of the PRoW network and the maintenance of those PRoW that are publicly maintainable highways
 - d) The Access Authority for Kent with responsibilities in respect of the King Charles III Coast Path and coastal access margin, access land, the production of a Rights of Way Improvement Plan and hosting an Access Forum (the Kent Countryside Access Forum)
- 2.2 The Service delivers the County Council's obligations in respect of these functions and is divided into three teams to aid efficient delivery. The Definition Team deliver the functions in respect of the DMS, common land and village green registration, and those resulting from the Countryside and Rights of Way Act 2000 including the improvement of the network. Two area teams (East and West) deliver the duties of the authority in relation to the assertion and protection of the network and its maintenance. Each of these areas is considered in further detail below, detailed against the relevant Authority as described at 2.1:

Surveying Authority - Definitive Map and Statement:

- 2.3 The work of the Definition Team is critical to the delivery of the County Council's statutory duties. The DMS underpins all of the Service activity in respect to protecting and maintaining PRoW. It informs land management; the presence of recorded or claimed PRoW may impact on land use, particularly development. The Regulation Committee is updated annually on the work of the Definition Team: Regulation Committee Report 17 September 2024 **Appendix C**.
- 2.4 The DMS provides conclusive evidence at law as to its contents. The DMS may only be amended as a result of a legal event such as the making and confirmation of a Definitive Map Modification Order (DMMO) or a Public Path Order (PPO).
- 2.5 Applications may be made to the County Council for a DMMO to amend the contents of the DMS on the basis that a right of way is omitted, should not be included or requires amendment in some other way: For instance a footpath should be shown as a public bridleway, or that a PRoW has been established through use without force, secrecy or permission. The County Council is obliged to determine any correctly made application.
- 2.6 Agreements may be reached or Orders made to create further PRoW, often in respect of development sites or to improve the PRoW network.
- 2.7 Applications may also be made to divert or extinguish PRoW in the public or landowner interest, for purposes of school security or rail safety. In addition applications may be made to planning authorities for the diversion of footpaths, bridleways and restricted byways in order to enable permitted development to lawfully progress. The Service processes such applications on behalf of twelve planning authorities in Kent (including KCC).

- 2.8 Public Path Order work is discretionary and full cost recovery is achieved as far as the relevant regulations permit.
- 2.9 The work is detailed, complex and heavily regulated. There are significant backlogs in the processing of applications for DMMOs reflecting this complexity. Orders to which objections are made must be forwarded to the Secretary of State (Planning Inspectorate) for determination which may involve written representations, local hearing or public inquiry. Appeal may be made to the SoS for direction where DMMO applications are declined or applications have not been determined within 12 months.
- 2.10 Amendments to legislation relating to the administration of the DMS were included in both the Countryside and Rights of Way Act 2000 and Deregulation Act 2015. The changes aimed to simplify the processes involved, to the benefit of all, and to deliver greater certainty for land managers. The principal change was to close the DMS to applications made on the basis of historic evidence. Other changes included the introduction of a right to apply to divert or extinguish PRoW: GEDCCC Committee Report 11 September 2024 **Appendix D**. Many of the reforms have yet to be implemented.
- 2.11 The current DMS has a relevant date of 31 May 2013. The updating (consolidation of the DMS) represented a huge amount of work leading up to its publication including;
- a) the mapping of former excluded areas (urban areas of Kent for which no map had previously been produced),
 - b) digitising the alignments of the PRoW from the 1987 DMS,
 - c) updating the DMS to reflect all of the Legal Events that had occurred since the production of the previous DMS in 1987. For example, confirmed Public Path Orders, Definitive Map Modification Orders, the Channel Tunnel Act , Channel Tunnel Rail Link Act, the M20 Side Roads Order.
- 2.12 In bringing the DMS into the digital age it has made future consolidation a more straight forward task.
- 2.13 Other work carried out by the Definition Team includes:
- a) Making responses to property searches, undertaken as part of the conveyancing process (CON29 and CON290 enquiries).
 - b) Processing Traffic Regulation Orders and Temporary Traffic Regulation Orders usually to prohibit public access in response to safety issues or to enable work on the highway.
 - c) Processing statutory declarations and deposits submitted by landowners to protect their land against the establishment of rights of way by use.

Registration Authority – Registration of Common Land, Town and Village Greens:

- 2.14 Town and Village Greens (TVG) are of significant amenity and recreational importance. The County Council's role is to maintain the registers of common land and TVGs, and to determine applications to amend the register. The registration of TVG may be voluntary or result from a successful application on the basis of qualifying use, without force, secrecy

or permission over a twenty year period. The determination of applications may be, and often is, contentious given the constraint that village green status imposes on the future use of land.

Highway Authority – Protection:

2.15 The County Council has a duty to assert and protect the rights of the public to the use and enjoyment of the highway. The work of the Service in protecting the network ranges through:

- a) The provision of advice and guidance to land managers to assist them in complying with their obligations in respect of PRow .
- b) The investigation of reports of obstruction and nuisance through to resolution.
- c) Working with partner organisations in the provision of information/ evidence that allows the efficient delivery of their duties. Eg District Councils, Environment Agency, Kent Police.

2.16 The investigation of reports follows a consistent process:

- a) Conciliation – providing land managers with the opportunity to resolve obstructions and nuisances prior to, or at an early stage of enforcement.
- b) The service of notice, providing a defined period in which time the obstruction/ nuisance must be removed.
- c) Direct action to remove the obstruction or nuisance at the expense of the landowner/ occupier. The full costs incurred by the County Council in investigating the matter and undertaking the work are recovered.

2.17 Prosecution, while uncommon and resource intensive, remains an option for significant obstructions and nuisances. The penalties for obstruction of the highway having been amended (Police, Crime, Sentencing and Courts Act 2022) with the maximum sentences now being up to 51 weeks imprisonment and/or an unlimited fine.

2.18 Responding to planning applications and planning policy consultations is a key activity in protecting the network as construction may not lawfully proceed so as to obstruct a PRow unless and until an Order for its diversion or extinguishment has been confirmed.

2.19 Again, this work is detailed and complex and requires a thorough working knowledge of, and adherence to, the relevant legislation, regulation, codes and guidance.

Highway Authority – Maintenance:

2.20 The majority of PRow are highways maintainable at the public expense (99%+ of Kent's network). An asset management plan approach is taken to the maintenance of the network. **Appendix E**. The modern replacement equivalent cost of those elements of the network for which KCC is responsible was most recently calculated as £140M with an annual spending requirement of £3.4M to maintain the network at a steady state. Investment has consistently run below this level and therefore there is a backlog of maintenance work currently, conservatively, standing at £5.9M.

- 2.21 The asset includes:
- a) 3046 Bridges. A combination of simple short span sleeper bridges, kit bridges, culverts, more complex longer span bridges, through to a footbridge crossing the railway at Ashford and a footbridge crossing the M20
 - b) Path furniture (Signposts, stiles, gates, steps, barriers etc) - 32000 Items
 - c) Aggregate surfaced PRow , principally bridleways and byways – 409Km
 - d) Tarmacadam surfaced PRow – 736Km
- 2.22 Maintenance work is identified through a mixture of planned inspection, ad-hoc inspection, reports from volunteer wardens and the public. A simple cost benefit analysis is used to prioritise repair and maintenance schemes taking into account factors such as public safety, asset condition and the alignment with stated policies and objectives. Those schemes providing greatest benefit are prioritised. There is often an element of improvement in the schemes undertaken given that the existing highway may have fallen into disrepair as a result of a fundamental inability to support the use made of it or an inability to withstand weather extremes. Such improvement has occurred across the highway network over centuries in response to changes in the type and patterns of use.
- 2.23 The principal areas of maintenance work are:
- a) Vegetation clearance – approximately 777Km of PRow are included on the annual vegetation clearance contract , 11.2% of the network. The majority of these routes are subject to two or three cuts.
 - b) Repair and replacement of bridges and structures.
 - c) Surface repair, renewal and provision including the drainage and provision of all-weather surfaces.
 - d) Repair and replacement of fingerposts and the provision of gates and stiles.
- 2.23 Maintenance work is completed by a mixture of:
- a) Contractors. These are usually small / medium enterprises based in Kent and the South East many of whom specialise in this area of work.
 - b) Officers who may complete work when on site if a solution can be delivered in a short space of time with the tools available.
 - c) Volunteers. The service harnesses the good will and interest of the public in the network to run two volunteer maintenance programmes.
- 2.24 The Countryside Access Wardens (79 Wardens are currently active) carry out small scale , low risk work on the network. They report on asset condition, carry out spot vegetation clearance, gate adjustment, waymarking and other similar activity that the Service would not otherwise be able to carry out.
- 2.25 Vegetation clearance volunteers. The Service has equipped and trained a number of groups to carry out vegetation clearance. This can supplement the work undertaken by contractors.

Access Authority:

2.26 The Countryside and Rights of Way Act 2000 introduced a number of additional obligations:

- a) To appoint a Local Access Forum, this is comprised of volunteers appointed by the access authority and advises on access matters
- b) To manage access in respect of the to the 2000Ha of access land, including the KCIII England Coast Path and coastal access margin (On establishment of the King Charles III England Coast Path National Trail (KCIII ECP), those sections of the trail not on public highway and land seaward of the trail becomes coastal access margin and is managed under the same provisions).
- c) To produce a Rights of Way Improvement Plan and review the plan every ten years. The ROWIP is to assess current provision and future need.

2.27 While the County Council is obliged to produce a Rights of Way Improvement Plan there is no duty to deliver improvements. However, it has been possible to deliver improvements through:

- a) Amendments to existing policy, for example adopting a policy of least restrictive access under which thousands of barriers to access have been removed from the network.
- b) The production of an asset management plan
- c) Prioritising those projects that meet with the Council's statutory obligations and align with wider policy objectives
- d) Securing external funding for improvement of the network,
- e) Securing developer contributions to address increased and future demand.
- f) Active involvement in national projects such as the development of the KCIII ECP National Trail.

Operational priorities:

2.28 The Service receives more unique fault reports annually than it has the capacity or resources to deal with. Inevitably reports are therefore prioritised on the basis of the importance and level of use of the route and the urgency of the issue raised. Resolution of issues can take considerable time and resource. Solutions may often involve numerous disciplines and much negotiation. (Included in **Appendix B**) : Public right of way operational priorities - Kent County Council

3. Finance

3.1 The Service budget for 2024-5 is:

- a) £2.1M Revenue (including approximately £200K income PA from cost recovery and grants)
- b) £900K Capital including a £200K revenue contribution.

3.2 In addition to the above, further grant income has been secured in respect of establishment work for the KCIII ECP, National Trail management and maintenance, National Landscapes - Farming in Protected Landscapes access grant and Highways England designated funds. This funding has enabled some improvements to be delivered and the asset management funding backlog to be slowed. That additional funding amounts to approximately £180K for the current year

3.3 In addition the Service seeks developer contributions to off-set the pressures that development places on the surrounding network, for instance through additional use. The contributions are received at various trigger points during development; for example, on commencement, or at the completion of a phase of the build out, or the occupation of a set number of properties. Currently £2M of developer contributions are in our programme for delivery. A further £209K has been secured in 24/25 from Sevenoaks District Council community infrastructure levy for projects throughout the district.

4. Policy Framework

4.1 The Service contributes to the County Council's Strategy "Framing Kent's Future"

- a) Levelling up Kent: Priority 1:- supporting ambitions to improve the health of Kent's population particularly promoting healthy behaviours.
- b) Infrastructure for Communities, Priority 2: Invests in Kent's high-quality landscapes, and supports the choice of alternative travel options by prioritising the maintenance of accessible walking routes and cycle lanes
- c) Environmental step change . Priority 3: Improve access for our residents to green and natural spaces especially in urban and deprived areas and through our Public Rights of Way network to improve health and wellbeing outcomes.

4.2 Securing Kent's Future. The Service seeks to deliver its work in the most efficient, economic and effective way, consistent with the prioritisation of the Council's best value duty. In that respect it is consistent with, and supports, Securing Kent's Future.

4.3 The Public Rights of Way Improvement Plan for Kent – 2018-2028. (Rights-of-Way-Improvement-Plan-2018-2028.pdf (kent.gov.uk) Appendix A). The plan was produced following wide ranging public consultation and engagement. It is required to make an assessment of existing provision and set out policies for the improvement of the network and how it will meet future requirements. The importance of having well maintained rights of way was consistently raised by the public and other stakeholders as essential to achieve the positive outcomes for health, well- being, the rural economy and active travel.

4.4 There are very few strategies and plans that the ROWIP, and the work of the Service, does not in some way contribute to or align with. For example:

- a) Local Transport Plan IV (and the, in preparation, Local Transport Plan V)
- b) Active Travel Strategy
- c) Local Development Plans and Core Strategies
- d) National Landscape Management Plans.

5. Legal Implications

5.1 As outlined in the report, there are many statutory duties that relate to PRow and access. It was once calculated that there are over four thousand pieces of statute, regulation, statutory guidance and case law relating to the management and administration of PRow. It is perhaps not surprising, given the mixture of rights and land management, that this is an area of law that has

been regularly litigated through the centuries, many noteworthy cases relating to Kent. It is often complex and highly scrutinised work. Legal advice is regularly sought by the Service in respect of more challenging matters. Advice is sought to ensure that risk to the authority is as far as possible mitigated.

6. Conclusions

6.1 The County Council fulfils a range of statutory functions in respect of PRow and access

- a) The recording of the rights of way network through the production and continual updating of the DMS, including determining applications to amend the map or to divert and extinguish public rights of way.
- b) The registration of Common land, Town and Village Greens, and the determination of applications to amend the registers.
- c) Asserting and protecting the rights of the public to use and enjoy PRow.
- d) The maintenance of those elements of the PRow asset that are publicly maintainable, through a mixture of contractor, officer and volunteer work.
- e) The management of access to access land and coastal access margin including stretches of the KCIII ECP.
- f) The production of a Rights of Way Improvement Plan and the appointment of an Access Forum.
- g) The establishment of strategies, policies and systems to ensure that the statutory duties are met and delivered in the most efficient way.

6.2 The work is often complex and requires a thorough working knowledge of the relevant statutes, case law and technical demands of the various disciplines.

6.3 The work of the Service in delivering the statutory obligations of the County Council is important as it supports the health and well-being of residents, encourages and provides key infrastructure for healthy lifestyles including travel choices. It contributes to the sense of place, provides a free opportunity to experience the landscape and nature of the County provides a network that enables residents and visitors to enjoy recreational visits, exploring the County and what it offers. It contributes hugely to the rural economy.

7. Recommendation(s)

Recommendation(s):

7.1 Growth, Economic Development and Communities Cabinet Committee is asked to consider this report and note its contents.

8. Background Documents:

- Appendix A: Rights of Way Improvement Plan [Rights-of-Way-Improvement-Plan-2018-2028.pdf \(kent.gov.uk\)](#)
- Appendix B: Countryside Access Improvement Plan 2013 – Operational Management: [Coastal-Access-Improvement-Plan-Operational-Management-Appendix-1.pdf](#)

- Appendix C: Report to the Regulation Committee September 2024 – Annual update from the Public Rights of Way and Access Service : [PROWAS Update report 2024: \(kent.gov.uk\)](#)
- Appendix D: GEDCCC Committee Report 11 September 2024 Amendments to the Highways Act 1980: [Amendments to the Highways Act 1980 Report.pdf \(kent.gov.uk\)](#)
- Appendix E: Rights of Way Asset Management Plan. [Rights of Way Asset Management Plan \(kent.gov.uk\)](#)

9. Contact details

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