

Update from the Public Rights of Way and Access Service Common Land and Village Greens

A report by the Head of Public Rights of Way and Access to Kent County Council's Regulation Committee on Tuesday 21st January 2025.

Recommendation:

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

Introduction

1. Kent County Council is a 'Commons Registration Authority', which means that it is responsible for holding the legal records of all registered Common Land and Village Greens in the county – known as the 'Registers of Common Land and Village Greens' – and for dealing with applications to amend those Registers under the Commons Act 2006 ("the 2006 Act").
 - 1.1 The majority of applications received are made under section 15(1) of the 2006 Act, which provides that any person may make an application to the County Council to register land as a new Town or Village Green, where it can be shown that the land has been used:
 - As of right (i.e without force, secrecy, or permission);
 - For a period of at least 20 years;
 - For the purposes of lawful sports and pastimes;
 - By a significant number of the inhabitants of any locality or any neighbourhood within a locality; and
 - Use has continued up to the date of application or, where use has ceased to be as of right, it did so no more than one year prior to the date of application.
 - 1.2 It is also possible for applications to be made by landowners to voluntarily register land in their ownership as a new Village Green under section 15(8) of the 2006 Act (in which case it is not necessary to demonstrate any evidence of use). This can be useful in situations where, for example, local Councils wish to ensure their land is protected against possible future development, or where developers wish to formally dedicate open space within new developments.
 - 1.3 Additionally, the County Council is also responsible for dealing with other kinds of applications made under the 2006 Act to amend the Registers, for example where the extent of the registered Common Land or Village Green was incorrectly recorded on the Registers.
 - 1.4 Note that whilst the County Council is responsible for managing the legal records, it has no powers in terms of management or enforcement issues relating to Common Land or Village Green, which instead fall to either local Councils or landowners to deal with. Enforcement issues can also be raised by individuals by way of application to a Magistrates Court.

Current Applications under the Commons Act 2006

2. Over the last year, six applications under section 15 of the Commons Act 2006 have been determined by the County Council. Of those, three applications were refused and the remaining three resulted in the successful registration of new Village Greens at Herne Bay (VG298), Tonbridge (VG299) and Hoath (VG300). The determined applications are listed at **Appendix A**.
- 2.1 Two of the refused applications followed Public Inquiries, each lasting several days, held in June 2023 (in respect of Two Fields at Westbere) and March 2024 (in respect of Bunyards Farm at Allington). In both cases, a Barrister was appointed by the County Council to act as an Inspector and hear evidence in support of and in opposition to the applications, before preparing a report to the County Council with a recommendation as to the outcome for each case. These kinds of application are often complex and time-consuming to deal with.
- 2.2 In 2024, six new applications were received to register land as new Village Green (an increase on the previous year), of which one was subsequently withdrawn by the applicant prior to work commencing on it¹. There are currently four outstanding applications to record new Village Greens (listed at **Appendix A**), two of which comprise voluntary applications by developers that are on hold pending completion of the developments (because the land cannot be registered as a Village Green until it is available for recreational use).
- 2.3 In addition to the outstanding applications relating to Village Greens, the County Council also has four outstanding applications relating to Common Land. These relate to historic omissions in respect of Common Land that was never formally registered, an administrative error in respect of a Village Green being mistakenly removed from the Register and, finally, an update in respect of ownership information regarding Rights of Common. Two of those applications are currently with the Planning Inspectorate (because they are of a type for which the Inspectorate is the 'determining authority'), and the other two will be referred to the Regulation Committee Member Panel for final decision in due course.

Repeal of the 'cut-off date' in respect of recording Public Rights of Way

3. In addition to maintaining the Registers of Common Land and Village Greens, the PROW and Access Service is also responsible, as Members will be aware, for the legal record of Public Rights of Way, known as the Definitive Map.
- 3.1 In 2000, the Countryside and Rights of Way Act introduced a deadline, known as the 'cut-off date', for the recording of new public rights of way on the basis of historic evidence. After this date – originally specified as 1st January 2026 – it would no longer be possible to record public rights of way on the basis of historic evidence, and those rights would effectively be lost. The purpose of this provision was to provide, from the 'cut-off date', certainty to landowners, local authorities and users as to the nature and extent of public rights over land, although applications made on the basis of user evidence (over a period of at least twenty years) could continue to be made.

¹ This was an application for voluntary dedication of land as a Village Green by the landowner and therefore the usual questions as to the public interest of allowing a withdrawal did not arise.

- 3.2 Over recent years, there has been much debate as to the merits, or otherwise, of this so called 'cut-off date', and many changes in policy, with the Government announcing (in early 2022) its intention to repeal the date altogether, before subsequently determining (in October 2023) to reinstate and extend it to 1st January 2031.
- 3.3 However, on 26th December 2024, the Government announced that the latest 'cut-off date' (set for 2031) would be repealed when parliamentary time allows. The Press Release is available here:
<https://www.gov.uk/government/news/government-steps-in-to-save-historic-rights-of-way-from-being-lost-to-the-nation>
- 3.4 In practical terms, this means that it will continue to be possible to submit applications to record public rights purely on the basis of historic, documentary, evidence. However, it is hoped that the repeal will result in a reduction in the rate at which applications are being submitted and, in the longer term, the total number of applications made.
- 3.5 In the December announcement Ministers also indicated their wish to continue with the wider package of reforms to streamline the processes relating to the Definitive Map and Statement.

Recommendation

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

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Appendices:

APPENDIX A - List of outstanding applications under the Commons Act 2006