

Update from the Public Rights of Way & Access Service

A report by the Head of Public Rights of Way and Access to Kent County Council's Regulation Committee on Thursday 16 October 2025.

Recommendation:

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

Progress with Definitive Map & Statement applications

1. A report is presented to the Regulation Committee, at the Autumn meeting each year, providing Members with a summary of the current position in respect of applications to amend the Definitive Map and Statement (DMS).

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 correctly made application it receives.

2.1. 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 substantially improve public safety or
- the claimed route may result in a significant improvement to the network.

In such instances a case may be accelerated.

2.2. During the period April 2024 to March 2025, 22 applications were determined, 19 Orders were made and 10 were confirmed. 22 cases are currently under investigation with a further 8 having recently been allocated. To date there are 116 unallocated applications (as of 23 September 2025). The number of applications received fluctuates with 37 applications being received in 2020, 19 in 2021, 27 in 2022, 7 in 2023, 39 in 2024 and 40 received in 2025 to date. The next application to be allocated was received in April 2021 indicating a backlog of close to 4.5 years. However, when considering that on average, 12-14 applications are determined each year, the reality is that the current backlog is nearer to 8.5 years.

2.3. There are currently 12 cases with the Planning Inspectorate, 11 of which are awaiting determination as objections were received to the made Order. One is to be determined following an appeal against the decision of the County Council to decline to make an Order.

2.4. The Schedule of Applications is updated on a regular basis and can be found on the County Council's website at:

[Correct the rights of way map - Kent County Council](#)

2.5. The backlog in applications and the disparity between the number of applications being received when compared with the number being determined nationally was the

subject of a BBC report in August 2024 and whilst it is from last year, it is still relevant and useful to read and I therefore attach a link for information : [Public rights of way applications backlog concerns campaigners - BBC News](#)

Applications to divert, extinguish or create public rights of way

3. As part of its rights of way functions, the County Council also processes 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 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 2024 to March 2025, 20 Public Path Orders have been confirmed. There are 24 unallocated diversions/extinguishments resulting in a backlog of approximately 18 months to 2 years between the receipt of an application and allocation to an officer.

3.2. There are 2 Orders with the Planning Inspectorate awaiting determination as objections were received to the made Order.

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 2024 to March 2025, 10 Public Path Orders have been confirmed/certified. There are 23 cases where Orders have been made and confirmed and are awaiting certification following the completion of the works on site.

3.4. There is 1 Town and Country Planning Act 1990 Order with the Planning Inspectorate awaiting determination.

3.5. The Schedule of Applications, which is updated on a regular basis, can be located on the County Council's website at:
[Change rights of way - Kent County Council](#)

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 further public rights of way or a village green from being established as a result of future unchallenged, as of right, public use.

4.1. During the period April 2024 to March 2025, 19 Deposits have been received, a decrease of 18 from the previous year.

Land Searches and Temporary Traffic Regulation Orders

5. The Definitive Map Team also provide local authority search responses in respect of public rights of way and common land and village greens. The Team processes the Temporary Traffic Regulation Orders required by the Public Rights of Way and Access Service when undertaking maintenance work, or to ensure public safety. Orders are also made to facilitate work by statutory undertakers, landowners and developers. The full cost of providing these services is recovered from the applicant. Given that much of this activity is tied to the state of the housing market and the level of development, it does fluctuate and may impact on the capacity of the team to progress Public Path and Definitive Map Modification Order applications.

Backlogs

6. I have referred to the application backlogs above at paragraphs 2.2 and 3.1. 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. It is interesting to note that whilst the backlog for applications to amend the DMS has increased, the backlog for applications to divert/extinguish has decreased and is expected to decrease further. This is mainly due to a reduction in applications received, with only 9 applications to divert or extinguish public rights of way having been received so far this year.

6.1 As I have stated above, we have 15 Orders currently with the Planning Inspectorate. The Planning Inspectorate considers appeals against decisions not to make definitive map and statement modification orders and determines Orders to which objections or representations have been received. The Inspectorate has a backlog of Orders to be determined. The backlog currently stands at approximately 9 months from the submission of an Order to it being reviewed by a case officer. Determination and the issuing of a decision may take many more months. Their backlogs directly impact on our work.

Legislative Update

7. In previous reports I have covered the Deregulation Act 2015 and the 2026 cut-off-date and the implications this will have on our Service. However, I thought it would be helpful to provide new Members with a recap.

7.1 The Deregulation Act was enacted on 27 March 2015, however, a package of reforms in relation to public rights of way have still to be implemented as the associated regulations and guidance are still to be laid or published. Progress to implement the reforms has been sporadic and frequently delayed. Currently no statutory instrument has been identified through which the provisions could be implemented. Government did, however, indicate in December 2024 its desire to continue with the package of reforms.

7.2. In 2000 the Countryside and Rights of Way Act introduced a deadline, known as the 'cut-off date', for the recording of 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.

7.3. Over recent years, there has been much debate as to the merits, or otherwise, of the '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 1 January 2031.

7.4. On 26 December 2024, the Government announced that the latest 'cut-off date' (set for 2031) would be repealed when parliamentary time allows. 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. 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. Although, due to the uncertainty with this legislation and until the cut-off-date has officially been repealed, stakeholders are continuing with their research and submitting applications.

7.5. During the past 5 years the County Council has seen a large increase in the number of Section 53 applications which has substantially increased the backlog. Out of the 116 applications awaiting allocation to an Officer, 89 are based upon pre-1949 historical evidence with only 27 being based upon user evidence. This reflects a significant change in the basis on which applications had been made with the majority previously having relied on user evidence.

Recommendation

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

Contact Officer:

Graham Rusling – Head of Public Rights of Way and Access
Tel: 03000 41 34 49 - Email: graham.rusling@kent.gov.uk
Public Rights of Way & Access Service