

<b>Decision maker:</b>	<b>Assistant Director Environment and Place</b>
<b>Date:</b>	28 July 2017
<b>Title of report:</b>	<b>Highways Act 1980, Section 119 Proposed Public Path Diversion Order Footpath LO4 (Part) and LO5 (Part) in the Parish of Llanrothal</b>
<b>Report by:</b>	<b>Parks and Leisure Commissioning Manager</b>

## Classification

Open

## Key Decision

This is not a key decision

## Wards Affected

Llangarron and Birch

## Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpaths LO4 and LO5 in the parish of Llanrothal.

## Recommendation

**THAT:**

- (a) A public path diversion order, for definitive footpaths LO4 and LO5 in the parish of Llanrothal, is made in accordance with section 119 of the Highways Act 1980 as shown in the draft order and plan D475i/243-4 (Plan 1) and D475ii243-5 (Plan 2) in the Appendix to this report.**
- (b) In the event that there are no unwithdrawn objections to the formal advertising of the order, it is then confirmed as satisfying the criteria in sub section (6) of the above section, for such confirmation**

## Alternative options

- 1 Under the provisions of section 119 of the Highways Act 1980 the council has the power to make diversion orders. It has no duty to do so. The council could therefore reject the application on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the council.

## Reasons for recommendations

2. This application meets the tests set out in section 119 of the Highways Act 1980 and the council's Public Path Order Policy and although one objection has been raised to the informal consultation undertaken by the applicant, it is still considered capable of confirmation.

## Key considerations

3. Mr D C Breakwell, who is the landowner, made the application on 8<sup>th</sup> March 2017. The reasons given for making the application are, *'To help the access and use of the footpaths in this area. These paths are now mainly used for leisure activities, dog walking, rambling, holidaymakers etc. As encouraged by local tourist boards. With the existing routes this can cause conflict with farming and local residents. I would like to facilitate these new activities and improve access to the countryside in this beautiful area whilst maintaining the privacy of local residents and the ability of modern farming to prosper.'*
4. The applicant has carried out all pre-order consultation. The proposal has general agreement from all the consultees. The owners of St John the Baptists' Church were consulted but did not respond. One objection was received.
5. Welsh Newton Group Parish Council has raised an objection to the proposals, stating that there was *'no public benefit in diverting the footpaths concerned'*. However, the order is made in the interests of the landowner not the public and it is considered that the order meets the tests set out in section 119 of the Highways Act 1980 and as such is capable of confirmation.
6. The applicant has agreed to pay for the advertising of the order, to fully reimburse the Council's costs in processing the matter and to defray any compensation that might subsequently be claimed and become payable.
7. The local member, Cllr. E Swinglehurst has no objection to the proposal.
8. The proposed diversion meets the specified criteria as set out in Council policy and section 119 of the Highways Act 1980 in particular that: -
  - The proposal is expedient as it benefits the owner of the land crossed by the existing paths.
  - The proposal does not alter the point of termination of the paths.
  - It is expedient to confirm the order, given the proposal is not substantially less convenient to the public, and it is expedient, having regard to the effect which (i) the diversion will have on the public enjoyment of paths as a whole, including any compensation payable (ii) the coming into operation of the order would have as respects other land served by the existing right of way and (iii) any effect the new public right of way created by the order would have as respects the land over which the new right is created, including any compensation payable.

## Community impact

9. The applicant has carried out a comprehensive pre-order consultation which included Welsh Newton and Llanrothal Parish Council, to which there was one objection from the parish council.

## **Equality duty**

10. The proposed new routes avoid crossing arable fields, following a wide track around the field edges (LO4). The existing route crosses arable fields which may be ploughed and planted intermittently. As such, the proposal is considered to be more accessible to members of the public and comply with the requirements of the Equality Act 2010.

## **Financial implications**

11. The applicant has agreed to pay for all administration and advertising costs associated with this order and any works necessary to bring the new routes into being. If the matter has to be referred to the Secretary of State the costs associated with any Inquiry or Hearing will be met by the council.

## **Legal implications**

12. The council has a discretionary power under section 119 of the Highways Act 1980 to make diversion orders in relation to public paths where it is 'expedient' to do so. This power is exercisable if it is in the interests of the owners, lessees or occupiers of land to do so or of the public and provided that the termination point of the path is onto the same highway or a highway connected to it. In making such an order the council must consider any material provisions of its Rights of Way Improvement Plan.
13. It is considered by the officer that that the criteria under section 119, referred to in paragraph 8 above, are met. Once an order is made it must be advertised as prescribed in Schedule 6 of the Highways Act 1980 and in accordance with the Public Path Order Regulations 1993. A minimum of 28 days must be given for objections to be made from the first publication of the notice of order.
14. If no objections are received to the formal advertising of the order, or any received are withdrawn, then the council may itself confirm the order provided that it is satisfied that the criteria in Section 119(6)(a) of the Highways Act 1980 are met. These are listed in paragraph 8 above.
15. If there are objections which are not withdrawn then the order will be referred to the Planning Inspectorate which will act on behalf of the Secretary of State to determine the order. The Secretary of State will appoint an Inspector who will either hold an inquiry or hearing or deal with the matter by way of written representations before making a decision on whether or not to confirm the order.

## **Risk management**

16. There is a risk that if the Order is made as proposed, it may receive objections. If objections are so received, the matter must then be referred to the Secretary of State for a decision, which will place an increased demand on officer time and resources. The costs necessary for this referral cannot be passed onto the applicant.
17. In this case a comprehensive pre-order consultation has been carried out by the applicant, to which an objection has been raised by the parish council and there remains the risk that the parish might formally object to the order once made.

## **Consultees**

18. Consultations undertaken by the applicant included: -

- Prescribed organisations as per Defra Rights Of Way Circular 1/09
- Local Member – Cllr. E Swinglehurst
- Welsh Newton and Llanrothal Group Parish Council
- Statutory Undertakers

## **Appendices**

Appendix 1– Draft Order and plan No D475i/243-4 (Plan 1) and D475ii/243-4 (Plan 2)

Appendix 2 – List of all consultees

Appendix 3 – Consultation responses

## **Background papers**

- Herefordshire Council Public Path Policy