

<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 LO6 (Part) in the Parish of Llanrothal and GW27A (Part) in the Parish of Garway and concurrent Highways Act 1980, Section 118 Proposed Public Path Extinguishment Order Footpath LO3 (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 footpath LO6 in the parish of Llanrothal and part of footpath GW27A in the parish of Garway and a concurrent application under the Highways Act 1980 section 118 to make a public path extinguishment order to extinguish part of footpath LO3 in the parish of Llanrothal.

## Recommendation

THAT:

- (a) A public path diversion order, for definitive footpath LO6 in the parish of Llanrothal and GW27A in the parish of Garway, is made in accordance with section 119 of the Highways Act 1980 and concurrent public path extinguishment order, for definitive footpath LO3 in the parish of Llanrothal is made in accordance with section 118 of the Highways Act 1980 as shown in the draft order and plan D475iii/243-6 in the Appendix to this report.
- (b) In the event that there are no unwithdrawn objections to the formal

**advertising of the orders, they are 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 and 118 of the Highways Act 1980 the Council has the power to make diversion and extinguishment 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 sections 119 and 118 of the Highways Act 1980 and the council's Public Path Order Policy and one objection has been raised to the informal consultation undertaken by the applicant, although it is considered that the orders are still capable of confirmation.

## **Key considerations**

3. Mr D C Breakwell, who is the landowner, made the application on the 8<sup>th</sup> of 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 although there has been one objection.
5. Welsh Newton and Llanrothal Group Parish Council has objected to the proposals as it considers that there is *'no public benefit in diverting the footpaths concerned'*.
6. The objection has been considered and the proposals are still considered to be capable of confirmation as they are in the benefit of the landowner (not the public) and are not substantially less convenient to the public and do not detrimentally affect the enjoyment of the user.
7. 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 payable. However, if the Parish Council maintains its objection when an order is made, the matter must then be referred to the Planning Inspectorate for a decision, the costs of which cannot be passed onto the applicant.
8. The section of footpath LO3 which is indicated on the order plan (appendix 1) is proposed to be extinguished only if the proposed diversion is capable of confirmation. This will avoid the section of LO3 remaining as a cul-de-sac path.
9. The local members, Cllr. E Swinglehurst and Cllr. D Harlow have no objections to the proposal.

10. 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 path.
  - The proposal does alter the point of termination of the path, to a path on a connecting highway which is as substantially as convenient to the public.
  - 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 path 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
11. The proposed concurrent extinguishment meets the specified criteria as set out in Council policy and section 118 of the Highways Act 1980 in particular that:-
- The part of footpath LO3 as indicated on the order plan is not needed for public use.
  - It is expedient to confirm the order, having regard to the effect which the extinguishment would have as respects other land served by the existing right of way, including any compensation payable.

## **Community impact**

12. The applicant has carried out a comprehensive pre-order consultation which included Welsh Newton and Llanrothal Group Parish Council, which raised an objection. The objection stated that it was because there was no public benefit in diverting the footpaths concerned but, the proposals are considered to meet the legal tests set out within the Highways Act 1980 and therefore capable of confirmation.

## **Equality duty**

13. The existing route passes along steep inclines and over three stiles and through three field gates. The proposed route also passes along steep inclines and through three field gates. Therefore the inclines are of similar gradient and the proposed route has fewer limitations, so the proposal is considered to comply with the requirements of the Equality Act 2010.

## **Financial implications**

14. The applicant has agreed to pay for all administration and advertising costs associated with this order and any works necessary to bring the new route 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**

15. 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.

16. The council has a discretionary power under section 118 of the Highways Act 1980 to make extinguishment orders in relation to public paths where it is 'expedient' to do so. This power is exercisable on the grounds that the path is not needed for public use.
17. It is considered above that that the criteria under section 119 and 118, referred to in paragraphs 10 and 11 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.
18. If no objections are received to the formal advertising of the orders, or any received are withdrawn, then the council may itself confirm the orders provided that it is satisfied that the criteria in Section 119(6)(a) and 118(2) of the Highways Act 1980 are met. These are listed in paragraphs 10 and 11 above.
19. If there are objections which are not withdrawn then the orders will be referred to the Planning Inspectorate which will act on behalf of the Secretary of State to determine the orders. 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 orders.

## **Risk management**

20. There is a risk that if the Orders are made as proposed, they 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.
21. 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**

22. Consultations undertaken by the applicant included: -
  - Prescribed organisations as per Defra Rights Of Way Circular 1/09
  - Local Member – Cllr. E Swinglehurst and Cllr. D Harlow
  - Welsh Newton and Llanrothal Group Parish Council and Garway Parish Council
  - Statutory Undertakers

## **Appendices**

Appendix 1– Draft Order and plan No D475iii/243-6 (Plan 3)

Appendix 2 – List of all consultees

Appendix 3 – Consultation responses

## **Background papers**

- Herefordshire Council Public Path Policy