

Record of Officer's Decision

Item:	Wildlife and Countryside Act 1981 Application for Modification Order in the Parishes of Llanrothal and Garway
Date of Decision	10 August 2017
Decision Maker (Officer)	Assistant Director Environment & Place
Authority for Delegated for Decision (Cabinet Decision or Scheme of Delegation – provide reference)	Regulations functions
If required, identify which Cabinet Member(s) /Portfolio Holder(s) consulted	None
Is it a Key Decision?	No
Decision made	<p>THAT:</p> <p>An application submitted by the Open Spaces Society for a Definitive Map Modification Order to add a route to the Council's Definitive Map and Statement as a Byway Open to All Traffic in the parishes of Llanrothal and Garway is refused, and that no Order be made.</p>
Reason for Decision (if a report was produced to support the Decision, refer to and attach the same)	<p>The Definitive Map and Statement are conclusive legal records of the status, position and width of public rights of way. Herefordshire Council has a duty under section 53 of the Wildlife and Countryside Act 1981 to keep its Definitive Map and Statement under continuous review. The Council must make Orders to modify the Map and Statement where evidence is discovered which, in conjunction with the other available evidence, shows that: -</p> <ul style="list-style-type: none"> • a period of time has expired during which enjoyment of a way by the public raises a presumption that it has been dedicated as a public path [Section 53 (3)(b)] • a right of way which is not shown subsists or is reasonably alleged to subsist [Section 53 (3)(c)(i)] • a highway which is shown ought to be shown as a highway of a different description [Section 53 (3)(c)(ii)] • there is no public right of way over any land shown as a highway of any description [Section 53 (3)(c)(iii)] <p>Following an investigation into the available evidence, it is considered that insufficient evidence has been discovered to meet the legal test set out in section 53(3)(c)(i) of the Wildlife and</p>

	Countryside Act 1981 in that a Byway Open to All Traffic subsists which is currently not shown on the Definitive Map and Statement.
Highlight any associated risks/finance/legal/equality considerations	None
Details of any Alternative Options considered and rejected (together with reasons)	The decision is whether, on the balance of probabilities, public rights subsist (or are reasonably alleged to subsist). In determining this matter, the council is carrying out a quasi-judicial function in accordance with the provisions of section 53 of the Wildlife and Countryside Act 1981. If it fails to act appropriately on the evidence discovered, it could face Judicial Review of the decision through the High Court.
Details of any declarations of interest (by Cabinet Member / portfolio Holder who was consulted by the officer, which related to the decision) If relevant, a note of the dispensation granted by the Monitoring officer:	

Officer Name: Richard Ball

Officer Title: Assistant Director Environment & Place



Signature:

Date: 10 August 2017