

Record of officer decision

Decision title:	Highways Act 1980, Section 119 Proposed Public Path Diversion Order Footpath LJ36(Part) in the Parish of Luston
Date of decision:	27 November 2019
Decision maker:	Acting Assistant Director Highways & Transport / Head of Infrastructure Delivery
Authority for delegated decision:	Directorate scheme of delegation: updated 14 February 2019 Directorate: Economy and Place, section 69. To act on behalf of the council in respect of the legislation specified in the foregoing: Traffic Management Act 2004, Road Traffic Act 1988 Acting Assistant Director for Highways and Transport (Traffic Manager designate) and The Traffic Manager may in making arrangements to ensure that the authority has: (a) determined specific policies or objectives in relation to different roads or classes of road in their road network; (b) monitored the effectiveness of – 117
Ward:	Bircher
Consultation:	Consultations undertaken by the applicant included: - <ul style="list-style-type: none"> • Prescribed organisations as per Defra Rights Of Way Circular 1/09 • Local Member – Cllr. Bowen • Luston Parish Council • Statutory Undertakers
Decision made:	THAT: (a) A public path diversion order, for definitive footpath LJ 36 in the parish of Luston, is made in accordance with section 119 of the Highways Act 1980 as shown in the draft order and plan D501 in Appendix1 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
Reasons for decision:	This application meets the tests set out in section 119 of the Highways Act 1980 and the Council's Public Path Order Policy and no objections have been raised to the informal consultation undertaken by the applicant.
Highlight any associated risks/finance/legal/equality considerations:	Community impact The applicant has carried out a comprehensive pre-order consultation which included Luston Group Parish Council, to which there were no objections. Equality duty The proposed new route passes through a busy farmyard with no stiles or gates. The existing route passes around the farmyard and will be without stiles or gates. As such, the proposal is considered to comply with the requirements of the Equality Act 2010. Financial implications 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.

	<p>Legal implications</p> <p>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.</p> <p>It is considered that that the criteria under section 119, referred to in paragraph 7 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.</p> <p>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 7 above.</p> <p>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.</p> <p>Risk management</p> <p>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.</p> <p>In this case a comprehensive pre-order consultation has been carried out by the applicant, to which no objections have been received and, therefore, the risk of receiving objections at Order-making stage is relatively low.</p>
Details of any alternative options considered and rejected:	Under the provisions of section 119 of the Highways Act 1980 the Council has the discretionary 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.
Details of any declarations of interest made:	If any officers or members involved or consulted in the decision-making have declared an interest you should include the declaration here.

I am an officer delegated to make the decision

Signed:

Print Name:

Mairead Lane

Job Title:

Acting Assistant Director Highways & Transport /
Head of Infrastructure Delivery