

Record of officer decision

Decision title:	Wildlife and Countryside Act 1981 Application for a Modification Order in the Parish of Clifford M309
Date of decision:	21 May 2020
Decision maker:	Acting Assistant Director Highways & Transport/ Head of Infrastructure Delivery
Authority for delegated decision:	<p>Directorate scheme of delegation: updated 20 March 2020 Directorate: Economy and Place, section 75.</p> <p>To act on behalf of the council in respect of the legislation specified in the foregoing:</p> <p>Traffic Management Act 2004, Road Traffic Act 1988, Cycle Tracks Act 1984, Highways Act 1980, National Parks and Access to the Countryside Act 1948, New Roads and Street Works Act 1991 Road Traffic Regulation Act 1984, Town and Country Planning Act 1990, Town Police Clauses Act 1847, Traffic Calming Act 1992 Wildlife and Countryside Act 1981</p>
Ward:	Golden Valley North
Consultation:	<p>A full consultation has been undertaken.</p> <p>The two parish councils have raised no substantive issues and no new evidence has been derived as a result. All landowners have been consulted and have seen a draft copy of the Research Report at Appendix 1. No more evidence has been provided as a result of the consultation that would lead to any change to the recommendations although the landowners of Llanerch-y-coed have engaged a PROW consultant who has provided his own report in response to the draft Research Report. This is contained in the Research Report at Appendix 2. Some of the comments resulted in slight amendments to the draft Research Report, however, his arguments were not considered sufficient to alter the recommendation.</p> <p>The local Herefordshire Councillor, Mrs J Hewitt, responded after the consultation period had ended requesting that if an order were to be made that it be re-routed so as to accommodate the needs of the landowner. Unfortunately, whilst this may be desirable to the landowners and their business it is not a material consideration within the context of this application. The question is whether it has been shown that public rights exist or could be presumed to exist over the claimed route? To which the recommendation in this report is yes, the public appears to have enjoyed public rights over at least part of the claimed route for a period of time exceeding 20 years and therefore an order should be made.</p>

	<p>Copies of all responses received to the consultation are at Appendix 3.</p> <p>It is likely that at least the landowner of Llanerch-y-coed will object to the Order to modify the Definitive Map and Statement, necessitating its referral to the Secretary of State.</p>
<p>Decision made:</p>	<p>The application for a Definitive Map Modification Order M309 to add a byway open to all traffic and to upgrade footpath CL44 be rejected as indicated between points A-B-C on the plan at Appendix 1;</p> <p>An order to add a bridleway to the Definitive Map and Statement be made under the Wildlife and Countryside Act 1981 s53 between points A and B on the plan at Appendix 1.</p>
<p>Reasons for decision:</p>	<p>To determine an application for a Definitive Map Modification Order to add a Byway Open to All Traffic (BOAT) to the Definitive Map and Statement and to upgrade an existing footpath to BOAT status in consequence of the duty set out in section 53(2)(b) of the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review.</p>
<p>Highlight any associated risks/finance/legal/equality considerations:</p>	<p>Community impact Whilst there is considered to be no adverse community impact in respect of this decision, it cannot be a relevant consideration under section 53 of the 1981 Act.</p> <p>Equality duty Under section 149 of the Equality Act 2010, the ‘general duty’ on public authorities is set out as follows:</p> <ul style="list-style-type: none"> • A public authority must, in the exercise of its functions, have due regard to the need to - • eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; • advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; • foster good relations between persons who share a relevant protected characteristic and persons who do not share it. <p>The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying ‘due regard’ in our decision making in the design of policies and in the delivery of services. Whilst there is considered to be no impact on our equality duty by this recommendation, it is not a relevant consideration under section 53 of the 1981 Act.</p> <p>Resource implications This is not a relevant consideration under section 53 of the 1981 Act. The Council cannot take financial considerations into account in determining whether or not to make Definitive Map Orders.</p>

	<p>The most time-consuming research part of the process has already been carried out. Once the decision has been made an order will be made and advertised. The estimated cost of the advert is approximately £450. If no objections are received (or received and subsequently withdrawn) then a further advert will be made for confirmation at a similar cost.</p> <p>If objections are received to the order, the matter will then require referral to the Secretary of State for a decision. This could be decided by written representations, a hearing or a public inquiry. It is difficult to estimate the costs for these matters as it is dependent on the numbers of objections and/or representation or support but a rough guide would be approximately £3,000- £4,000 for a public inquiry (including the engagement of PROW advocate to present the case and room hire etc).</p> <p>The costs associated with the making of the order as recommended will be absorbed by the current PROW revenue budget which rests with Balfour Beatty Living Places as agreed through the Annual Plan.</p> <p>Legal implications Herefordshire Council as surveying authority for rights of way has a duty under section 53 of the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to modify it by order where relevant evidence is discovered.</p> <p>In this case, sufficient evidence has been discovered to reasonably allege that the route indicated as A-B on the plan at Appendix 1 has bridleway rights and an order should be made to add it to the Definitive Map and Statement.</p> <p>If the Council receives objections to any Order it makes, which are not subsequently withdrawn, it must submit the Order to the Secretary of State for confirmation as required by the provisions of Schedule 15(7)(1) of the 1981 Act. This may result in the holding of a public inquiry or hearing, the costs of which must be borne by the Council and would be met through the Annual Plan process. Otherwise the Council can confirm the Order itself if there are no objections.</p> <p>Risk management As stated above, there is potential for objection to any Order made by the Council which, if not withdrawn, will prolong the process by having to be referred to the Secretary of State to determine which may follow a public inquiry or some other process. Conversely, if the Council does nothing, the risk is that the applicant appeals to the Secretary of State for a direction that the Council determines the matter in any event.</p>
<p>Details of any alternative options considered and rejected:</p>	<p>The decision is to determine if, on the balance of probabilities, public rights subsist (or are reasonably alleged to subsist) and what those rights are, along the route shown A-B-C on the plan at Appendix 1 and as fully set out in the Research Report at</p>

	<p>Appendix 2. In determining this matter the Council is carrying out a quasi-judicial function in accordance with the provision or section 53 and schedules 14 and 15 of the 1981 Act. The only alternative options would be to do nothing, whereby public rights will be omitted from the Definitive Map and Statement (and risk a direction from the Secretary of State to make an order on appeal), to amend any part of the decision, or to accept the application on the basis that a sufficient and cogent case, based on the available evidence, indicates that the rights subsist or can reasonably be alleged to subsist.</p> <p>The Council is duty bound to investigate such matters.</p>
<p>Details of any declarations of interest made:</p>	<p>If any officers or members involved or consulted in the decision-making have declared an interest you should include the declaration here.</p>

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