

Record of officer decision

Decision title:	Highways Act 1980, Section 119 Proposed Public Path Diversion Order Footpath D514 AV4 (Part) in the Parish of Avenbury
Date of decision:	23 June 2020
Decision maker:	Acting Assistant Director Highways & Transport
Authority for delegated decision:	Directorate scheme of delegation: updated 20 March 2020 Directorate: Economy and Place, section 75. To act on behalf of the council in respect of the legislation specified in the foregoing: 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
Ward:	Bishops Frome and Cradley
Consultation:	Consultations undertaken by the included: - <ul style="list-style-type: none"> • Prescribed organisations as per Defra Rights of Way Circular 1/09 – The Malvern Hills Footpath Society did initially object. However following discussions an agreement was reached. • Local Member – Cllr. Chowns – No Objection to the proposal • Avenbury Parish Council - No Objection to the proposal. • Statutory Undertakers – No Objections
Decision made:	<p>(a) A public path diversion order, for definitive footpath AV4 in the parish of Avenbury, is made in accordance with section 119 of the Highways Act 1980 as shown in the draft order and plan D514 in the Appendix 1 to this report; and</p> <p>(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.</p>
Reasons for decision:	To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of Footpath AV4(part) in the parish of Avenbury.
Highlight any associated risks/finance/legal/equality considerations:	<p>Community impact A comprehensive pre-order consultation has been carried out by the applicant which included Avenbury Parish Council, local user groups and statutory undertakers to which there were no sustained objections.</p> <p>Equality duty The proposed and existing routes are broadly the same length. The existing route crosses a cattle grid and two stiles. The new route</p>

avoids the cattle grid and passes through two gates. Therefore, it is considered there is a positive impact on Herefordshire Council's Equality duty.

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Resource implications

The applicant has agreed to pay for the advertising costs associated with this order as well as all the costs associated with bringing the new route into being, in this case a new water course crossing, and 2 pedestrian gates. 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 budget allocated to the rights of way service through the annual plan.

Legal implications

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.

It is considered that the criteria under section 119, referred to in paragraph 6 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.

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 6 above.

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

Risk / opportunity	Mitigation
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	A comprehensive pre-order consultation has been carried out by the applicant, to which no objections have been

	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.	received and, therefore, the risk of receiving objections at Order-making stage is relatively low.
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 reject the application on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council. However the application meets the tests set out in S.119 of the Highways Act 1980 and it does not detract from the wider ambitions and priorities of the Council. It may therefore be considered unreasonable for the council to not make an order.	
Details of any declarations of interest made:		

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