

Record of officer decision

Decision title:	Town and Country Planning Act 1990, Section 257 Proposed Public Path Diversion Order Footpath WC96 (Part) in the Parish of Whitchurch
Date of decision:	15 January 2021
Decision maker:	Acting Assistant Director Highways and Transport / Head of Infrastructure Delivery
Authority for delegated decision:	Directorate scheme of delegation: updated 1 December 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:	Kerne Bridge
Consultation:	Initial consultations undertaken by the applicant included: - <ul style="list-style-type: none"> • Prescribed organisations as per Defra Rights Of Way Circular 1/09 – No sustained objections • Local member, Cllr. Watson - Raised concerns about the proposal and does not feel able to support it • Whitchurch Parish Council – Raised concerns about the accessibility of the proposed route • Statutory Undertakers – No objections to the proposal although there are some services in the area. <p>Further consultations carried out on a second proposal included:-</p> <ul style="list-style-type: none"> • Ramblers Association – Happy with proposed route • Local member, Cllr Watson – Re-iterated initial concerns • Whitchurch Parish Council – Considered new proposal was an improvement
Decision made:	THAT: (a) A public path diversion order, for definitive footpath WC96 in the parish of Whitchurch, is made in accordance with section 257 of the Town and Country Planning Act 1990, as shown in the draft order and plan TCPA98 in the Appendix 1 to this report to enable development to be carried out and; (b) In the event that there are no un-withdrawn objections to the formal advertising of the order, it is then confirmed and;

	(c) If sustained objections are received, the matter can be passed to the Secretary of State to hold an inquiry and to decide whether to confirm the order.
Reasons for decision:	To consider an application under the Town and Country Planning Act 1990, section 257, to make a public path diversion order to divert part of footpath WC96 in the parish of Whitchurch.
Highlight any associated risks/finance/legal/equality considerations:	<p>Community impact The applicant has carried out a comprehensive pre-order consultation, which included Whitchurch Parish Council, to which a number of concerns were raised by both the Parish Council and the Local Ward Member. As a result of this the route was amended. A summary of responses is attached at appendix 4.</p> <p>Environmental Impact This decision / proposal seeks to deliver the council's <u>environmental policy commitments</u> and aligns to the following success measures in the County Plan.</p> <ul style="list-style-type: none"> • Improve residents' access to green space in Herefordshire • Increase the number of short distance trips being done by sustainable modes of travel – walking, cycling, public transport <p>Equality duty The existing route of WC96 is obstructed in a number of places. The proposed route passes through two gates. Both the current and proposed routes are of similar length. The legal line follows a generally level surface whilst the proposed line requires access up a slight slope. The current gates which is on the proposed route will be required to meet that agreed Herefordshire Council design specifications. As such, the proposal is considered to comply with the requirements of the Equality Act 2010.</p> <p>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 -</p> <ol style="list-style-type: none"> (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. <p>Resource 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 budget allocated to the rights of way service through the annual plan.</p> <p>Legal implications The Council has a discretionary power under section 257 of the Town and Country Planning Act 1990 to make diversion orders if it is satisfied it is necessary to enable development granted planning permission to be carried out. In making such an order the Council must consider any</p>

	<p>material provisions of its Rights of Way Improvement Plan</p> <p>It is considered by the officer in paragraph 7 above that the criteria under section 257, are met. An order can be made prior to the grant of planning permission pursuant to section 257(1A) Town and Country Planning Act 1990. An application for planning permission has been made under the Council's reference number P200175/F. If the planning permission was granted it would be necessary to authorise the diversion to enable the development granted by the planning permission to be carried out. The Council is satisfied that the order is required to enable the development granted by the planning permission to be carried out. Once an order is made it must be advertised as prescribed in the Town and Country Planning Act 1990 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 259 of the Town and Country Planning Act 1990 are met.</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 some adverse local comments were received and therefore, the risk of receiving objections at Order-making stage is regarded as medium.</p>
<p>Details of any alternative options considered and rejected:</p>	<p>Under the provisions of section 257 of the Town and Country Planning Act 1990 the Council has the power to make diversion orders to enable development to take place. 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.</p>
<p>Details of any declarations of interest made:</p>	

I am an officer delegated to make the decision

Signed:

Print Name: Mairead Lane
 Job Title: Assistant Director Highways & Transport /
 Head of Infrastructure Delivery