

## Record of officer decision

<b>Decision title:</b>	<b>Wildlife and Countryside Act 1981</b> <b>Application for three Modification Orders in the Parishes of Westhide, Yarkhill, Ocle Pychard and Much Cowarne</b>
<b>Date of decision:</b>	28 January 2021
<b>Decision maker:</b>	Acting Assistant Director Highways and Transport / Head of Infrastructure Delivery
<b>Authority for delegated decision:</b>	<p>Directorate scheme of delegation: updated 1 December 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>
<b>Ward:</b>	Three Crosses; Hagley
<b>Consultation:</b>	<p>The Local Ward Members Councillors Jonathan Lester and Paul Andrews were sent a copy of the draft investigation report and consulted for their views on 14<sup>th</sup> January 2020. At the same time, Ocle Pychard Group Parish Council, Much Cowarne Parish Council, Withington Group Parish Council and Yarkhill Parish Council and the affected landowners were also consulted, and the landowners sent questionnaires. A summary of the returned landowner questionnaires, comments and Parish Council responses are set out in appendix 3.</p> <p>Cllr Paul Andrews responded and stated he did not have any comments at this time but would wait for the views of the Parish Councils. Yarkhill, Westhide and Ocle Pychard parish councils responded, all of whom supported the addition of the claimed routes</p> <p>Six landowners responded. Whilst two considered the routes to be public, four landowners did not consider the routes to be public. Two of the landowners submitted declarations drawn up by solicitors stating that they had always considered the routes to be private and that there had never been public access along the routes claimed. One of the landowners went into detail about how the farm entrances were closed each year, 'Private, Keep Out' signs erected, gates locked and trespassers turned back. The landowner also provided names of individuals given express permission to use parts of the claimed routes, along with details of DEFRA sponsored permissive access schemes and a s.31(6) declaration. Whilst this is all a clear indication that the landowners went to considerable efforts to prevent deemed dedication, the evidence used in this investigation report is almost completely historic based and therefore the efforts to rebut deemed dedication are not applicable in this case. For this reason the declarations made by the landowners have not been included in the</p>

	<p>final research report.</p> <p>One landowner employed a separate consultant, Marches Planning and Consultancy, to challenge the evidence set out in the investigation report. The consultants provided a detailed report mainly challenging the individual pieces of evidence set out in the investigation report. Where appropriate the comments and evidence provided by the consultants have been incorporated into the final research report and a full copy of the consultant’s report is attached as an appendix to the research report.</p>
<p><b>Decision made:</b></p>	<p>That:</p> <p>(a) An order be made under the provisions of section 53(2)(b) of the Wildlife and Countryside Act 1981, in consequence of an event under section 53(3)(C)(i) of that Act to add a Public Bridleway along the route shown on the plan in Appendix 1 between points A-B-C-D-E-F-G (M344) with an average width of between 5.5 and 9.0 metres, as measured from the Ordnance Survey 1904 Map, to the Definitive Map and Statement and;</p> <p>(b) An order be made under the provisions of section 53(2)(b) of the Wildlife and Countryside Act 1981, in consequence of an event under section 53(3)(C)(i) of that Act to add a Public Bridleway along the route shown on the plan in Appendix 1 between points J-K-L-M-D (M345) with an average width of between 1.5 and 2.0 metres, as measured from the Ordnance Survey 1904 Map, to the Definitive Map and Statement and;</p> <p>(c) An order be made under the provisions of section 53(2)(b) of the Wildlife and Countryside Act 1981, in consequence of an event under section 53(3)(C)(i) of that Act to add a Restricted Byway along the route shown on the plan in Appendix 1 between points Q-J-P (M346) with an average width of between 3.0 and 14.0 metres as measured from the Ordnance Survey 1886/1888 and 1904 Maps, to the Definitive Map and Statement.</p>
<p><b>Reasons for decision:</b></p>	<p>To seek a decision to make a Definitive Map Modification Order to record:-</p> <ul style="list-style-type: none"> <li>• A Public Bridleway in the parishes of Westhide and Yarkhill (M344)</li> <li>• A Public Bridleway in the parishes of Ocle Pychard, Westhide and Yarkhill (M345)</li> <li>• A Restricted Byway in the parishes of Ocle Pychard and Much Cowarne (M346)</li> </ul> <p>in consequence of the duty set out in section 53(2)(b) and 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) to keep the Council’s Definitive Map and Statement under continuous review.</p>
<p><b>Highlight any associated risks/finance/legal/equality considerations:</b></p>	<p><b>Community impact</b>          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><b>Equality duty</b>          Whilst there are considered to be no equality implications, this is not a relevant consideration under section 53 of the 1981 Act.</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> <ul style="list-style-type: none"> <li>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;</li> <li>(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;</li> <li>(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</li> </ul> <p><b>Resource implications</b>  Under section 53 of the 1981 Act, the council cannot take financial considerations into account in determining Definitive Map applications. Following the making of the order it will be advertised as required by Schedule 15, paragraph 3 of the Act 1981. Should the route be added to the Definitive Map in due course, it would be publicly maintainable which would place an additional burden on the public rights of way budget although this is likely to be very minimal. Any future management, maintenance and improvements will be prioritised in accordance with the criteria set out in the Public Realm Annual Plan and the Council’s Rights of Way Improvement Plan.</p> <p><b>Legal implications</b>  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.</p> <p><b>Risk management</b>  Given the outcome of the initial consultations on this application, it is likely that an Order to record the route would receive objections from the affected landowners and may, therefore, have to be submitted to the Secretary of State for confirmation. As stated above, this could result in a public inquiry or an informal hearing or the matter might be determined by written representations. This is part of the normal, legal procedure for dealing with applications under section 53 of the 1981 Act.</p>
<p><b>Details of any alternative options considered and rejected:</b></p>	<p>There are no alternative options. 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 1981 Act.</p>
<p><b>Details of any declarations of interest made:</b></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