

Record of officer decision

Decision title:	Wildlife and Countryside Act 1981 Application for a Modification Order in the Parish of Whitbourne M332
Date of decision:	17 March 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:	Bromyard Bringsty
Consultation:	Whitbourne Parish Council and the affected landowners were consulted on the 30 th August 2019, and the landowners sent questionnaires. The Parish supported the recommendation. Three landowners responded, two of whom believed the route to be public and one who considered it private. All three landowners had concerns about the effect of the application of their private access rights. A summary of the returned landowner questionnaires and additional comments are set out in appendix 3. The Local Ward Member, Cllr. Shaw was sent a copy of the draft report on the 30 th August 2019. He responded by declaring an interest as a beneficial owner with a right of way to pass along the track. Cllr. Shaw set out a number of comments regarding the evidence set out in the report and suggested some minor corrections. In summary Cllr. Shaw appears to find the evidence of a public road compelling but has concerns about the interpretation of some of the evidence. A summary of the response is attached.
Decision made:	The Definitive Map and Statement are conclusive legal records of the status, position and width of public rights of way and Herefordshire Council has a legal duty under section 53 of the 1981 Act to keep it under continuous review. The Council must make Orders to modify the Map and Statement where evidence is discovered which shows that there is sufficient evidence to show public rights may exist where none are currently recorded. Following an investigation into the available evidence, it is considered that: - there is sufficient historical evidence which shows that a right of way which is not shown on the Definitive Map and Statement can be reasonably alleged to subsist. (Wildlife and Countryside Act 1981 Section 53(3)(c)(i)). Prior to 1985 the claimed route A-B was shown appeared on Herefordshire Council's list of streets. No evidence of a stopping up order has been found to explain why the section A-B is not shown of the

	current list of streets, therefore the list should be amended.
Reasons for decision:	<p>To seek a decision to make a Definitive Map Modification Order to record a Restricted Byway in the parish of Whitbourne 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>THAT:</p> <ul style="list-style-type: none"> (i) 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 section 53(3)(C)(i) of that Act to add a Restricted Byway, with an average width of between 3-5 metres, to the Definitive Map and Statement along the route shown A-B on the plan in Appendix 1 and; (ii) Herefordshire Council's List of Streets is amended to extend the termination point of the existing unclassified county road U65023 to include the route shown A-B on the plan in Appendix 1 and; (iii) If sustained objections are received, the matter can be passed to the Secretary of State for a decision.
Highlight any associated risks/finance/legal/equality considerations:	<p>Community Impact</p> <p>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>Environmental Impact</p> <p>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</p> <p>Whilst there are considered to be no equality implications, this is not a relevant consideration under section 53 of the 1981 Act.</p> <p>Financial Implications</p> <p>This is not a relevant consideration 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>Legal Implications</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.</p> <p>Following the making of the Order it will also be necessary for the Council in accordance with Schedule 14 paragraph 3 of the 1981 Act to serve notice of its decision on the applicant and any owner or occupier of the land to which the Order relates.</p> <p>Risk Management</p> <p>Given the outcome of the initial consultations on this application, it is possible 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>Details of any alternative options considered and rejected:</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>Details of any declarations of interest made:</p>	<p>None</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