

## Record of Officer Decision

<b>Decision title:</b>	Highways Act 1980, Section 119 Proposed Public Path Diversion Order Footpath BJ3 (Part) in the Parish of Bartestree
<b>Date of decision:</b>	02 June 2026
<b>Decision maker:</b>	Group Manager - Streetscene, Network Management and Public Rights of Way
<b>Authority for delegated decision:</b>	Directorate scheme of delegation: Economy and Place, section 75.  To act on behalf of the Council in respect of the legislation specified in the foregoing: Highways Act 1980.
<b>Ward:</b>	Hagley
<b>Consultation:</b>	<p>Consultation undertaken by the Council included:</p> <p>Prescribed organisations as set out in the Defra Rights of Way Circular 1/09 – An objection was received from the Open Spaces Society local representative.</p> <p>Local Member Councillor Powell - No objection to the proposal</p> <p>Bartestree with Lugwardine Group Parish Council – No objection to the proposal</p> <p>Statutory Undertakers – No objections to the proposal</p>
<b>Decision made:</b>	<p><b>THAT:</b></p> <p>(a) A public path diversion order, for definitive footpath BJ3 in the parish of Bartestree, is made in accordance with section 119 of the Highways Act 1980, as shown in the draft order and plan D574 in Appendix 1 attached to this report and;</p> <p>(b) In the event that there are no un-withdrawn objections to the formal advertising of the order, it is then confirmed.</p> <p>(c) If sustained objections are received, the matter can be passed to the Secretary of State for a decision.</p>
<b>Reasons for decision:</b>	<p>The Public Rights of Way (PROW) Team undertook to divert the right of way because, upon inspection of a broken footbridge on the path, it was found that this was not located on the legal line of the path.</p> <p>In the first instance, consideration was given to replacing the bridge on the existing legal line and also to diverting the path to the current location of the bridge.</p> <p>Using the existing legal line would be difficult because the span over the watercourse is much wider at this point, it is also very overgrown and the land dips down to the watercourse and then rises the other side. To divert to the current location of the bridge would be possible, but the land dips down to the watercourse here also.</p>

	<p>Following discussions with the affected landowner, a potential alternative route was discovered which is considered to be as convenient and which is the proposed order route shown on the plan at Appendix 1.</p> <p>Whilst the route is longer and not as direct as the existing, it has a level gradient, is easier to navigate and requires a ditch crossing rather than a footbridge, making it more accessible for the public. The path would be more likely to remain open in the future as it will not be affected by the banks of the watercourse slipping away and impacting the footbridge.</p> <p>The Council will pay the costs associated with advertising the order and any works required.</p> <p>The PROW Team carried out a pre-order consultation based on a proposed route (Appendix 2). There was an objection to the proposal from the Open Spaces Society local representative who believes that the proposal is substantially inconvenient and evades the Council’s duty to maintain the network. It is considered that the more level ground and one less gate to navigate makes the proposal equally convenient. The Council will still need to carry out its statutory duty to maintain the path and the ditch crossing. This also provides value for money to the public as this will be less costly to install now, and in the future, than a footbridge.</p> <p>The Local Member, Councillor Powell, has no objections to the proposal.</p> <p>The proposed diversion meets the specified criteria set out in Council policy and in accordance with the provisions of section 119 of the Highways Act 1980 in that:</p> <p>The proposal is expedient as it benefits the owner of the land crossed by the existing path and has their agreement.</p> <p>It is expedient to confirm the order, given the proposal is not substantially less convenient to the public, and it is expedient, having regard to the effect which (i) the diversion will have on the public enjoyment of the path as a whole, including any compensation which becomes payable (ii) the coming into operation of the order would have as respects other land served by the existing right of way and (iii) any effect the new public right of way created by the order would have as respects the land over which the new right is created, including any compensation payable.</p>
<p><b>Highlight any associated risks/finance/legal/equality considerations:</b></p>	<p><b>Community impact:</b> The PROW Team carried out a comprehensive pre-order consultation, which included Bartestree with Lugwardine Group Parish Council, local user groups, and statutory undertakers, to which there was one objection from the Open Spaces Society representative.</p> <p><b>Equality:</b> Under section 149 of the Equality Act 2010, the ‘general duty’ on public authorities is set out as follows:</p>

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.

The majority of public rights of way are in a very rural environment, often remote, with uneven surfaces and varying gradients. There are stiles and gates on many paths which are necessary for stock control. There are also bridges and steps on many paths which aid access to paths by providing crossings for streams and rivers and to help with steep gradients. The nature of the paths means that access may be difficult for members of the public with mobility issues or a disability.

Diversion/creation orders seek to remove stiles wherever possible and improve access by installing gates in their place which allow use by a wider group of people. The Rights of Way Improvement Plan also aims to improve access to public rights of way in this way.

For this proposal whilst the proposed route is longer and not as direct as the existing route, it is on more level ground, has a ditch crossing and one gate instead of a footbridge with two gates, and is easier to navigate. It is, therefore, considered to be more accessible to the public. As such, the proposal is considered to comply with the requirements of the Equality Act 2010.

**Finance:**

All administration and advertising costs associated with this order are to be covered by the Council together with any works that are necessary to put the new path on the ground. 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 Council.

**Environmental Impact:**

This decision/proposal seeks to deliver the Council's environmental policy commitments and aligns to the following success measures in the County Plan.

- 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.

**Resource implications:**

The Council will defray any compensation, but the affected landowners have signed waivers in respect of compensation which may become payable under the Highways Act 1980 S.28 as applied by S.119(5) as amended in consequence of the coming into operation of any said diversion. 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:**

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) – (c) and 6A (b) of the Highways Act 1980 are met. These are listed in 'Reasons for Decision' 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:**

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.

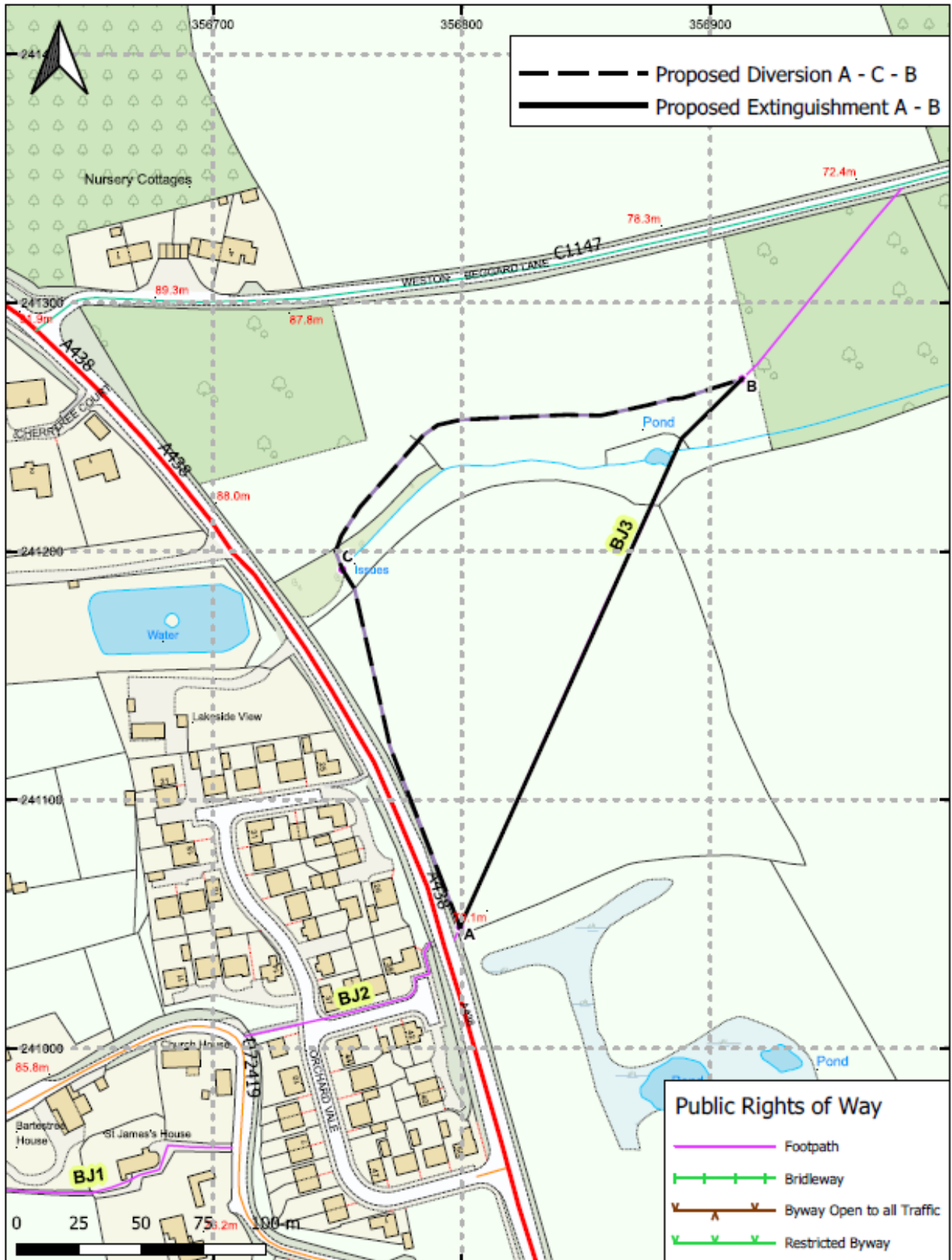
In this case a comprehensive pre-order consultation has been carried out by the Council, to which one objection has been received and, therefore, there is a risk of receiving an objection at Order making stage. This means the Order would need to be submitted to the Secretary of State for a decision as to whether it can be confirmed.


<b>Details of any alternative options considered and rejected:</b>	Under the provisions of Section 119 of the Highways Act 1980 the Council has the discretionary power to make diversion orders but 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. As the application meets the tests set out in Section 119 of the Highways Act 1980 it may be considered unreasonable for the Council to not make an order.
<b>Details of any declarations of interest made:</b>	If any officers or members involved or consulted in the decision-making have declared an interest you should include the declaration here. N/A

Signed:

Date: 02 June 2026

***Please ensure that signatures are redacted before publishing.***



<p><b>Highways Act 1980, Section 119</b>  <b>Herefordshire Council</b>  <b>Public Footpath BJ3 (Part) Bartestree</b>  <b>Public Path Diversion Order 2026</b></p>	<p>Drawing No: D574                  Scale at A4: 1:2,000                  Date: 25/03/2026</p>	<p>Herefordshire Council                  Plough Lane                  Hereford                  HR4 0LE</p>	
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