

## Record of officer decision

<b>Decision title:</b>	Wildlife and Countryside Act 1981 Application for Modification Order in the parish of Luston, Reference M243
<b>Date of decision:</b>	12 April 2019
<b>Decision maker:</b>	Acting Assistant Director Highways & Transport
<b>Authority for delegated decision:</b>	Directorate scheme of delegation: updated 1 November 2018 Directorate: Economy and Place, section 69. To act on behalf of the council in respect of the legislation specified in the foregoing: Traffic Management Act 2004, Road Traffic Act 1988 Acting Assistant Director for Highways and Transport (Traffic Manager designate) and The Traffic Manager may in making arrangements to ensure that the authority has: (a) determined specific policies or objectives in relation to different roads or classes of road in their road network; (b) monitored the effectiveness of – 117
<b>Ward:</b>	Bircher
<b>Consultation:</b>	The Luston Group Parish Council and the local Herefordshire Councillor Sebastian Bowen were consulted and sent a copy of the draft report on 8th January 2019. The owners and occupiers of land adjoining or crossed by the claimed route were also consulted at the same time. The Parish Council responded that they “...agreed with the evidence and noted that the path is used at the discretion of the local landowner(s).” Cllr. Bowen responded by telephone, saying that he was disappointed by the draft recommendation not to make an order as he thought it would be a useful route for the village, but he did not have any additional evidence relating to use of the route. None of the other consultees added any new evidence to support the existence of the claimed route. Some of the adjoining landowners said they believed the route to be public but gave no further evidence to support this, whilst others stated that they did not regard the route as public. Mr Morgan (who owns most of the land crossed by the route) stated that to his knowledge section A – B of the route had been obstructed by buildings and walls from 1955 to 2000.
<b>Decision made:</b>	That no order be made under section 53(2)(b) of the Wildlife and Countryside Act, 1981 in consequence of events specified in section 53(3)(b) or section 53(3)(c)(i), to modify the definitive map and statement to record a public footpath along the route A – B – C – D as shown on the plan at Appendix 1 (attached to report)
<b>Reasons for decision:</b>	To consider an application under section 53 of the Wildlife and Countryside Act 1981, to record a public footpath from the B4361 road at Lustonbury to footpath Luston LJ25.
<b>Highlight any associated risks/finance/legal/equality considerations:</b>	None
<b>Details of any alternative options considered and rejected:</b>	There are no alternative options. The Council is carrying out a statutory duty in determining this application under the provisions of section 53 of the Wildlife and Countryside Act 1981. This function is quasi-judicial in nature and therefore the Council’s role is to assess the evidence and decide whether the claim meets the appropriate legal tests. If it fails to act appropriately on the evidence discovered,

	the Council could face an appeal to the Secretary of State or ultimately a statutory challenge under the provisions of the Act.
<b>Details of any declarations of interest made:</b>	

I am an officer delegated to make the decision

Signed:

Job Title:                   Acting Assistant Director Highways & Transport