

## Record of officer decision

<b>Decision title:</b>	Town and Country Planning Act 1990, Section 257 Proposed Public Path Diversion Order Footpath MK 1 (Part) in the Parish of Monkland
<b>Date of decision:</b>	15 October 2020
<b>Decision maker:</b>	Acting Assistant Director Highways and Transport / Head of Infrastructure Delivery
<b>Authority for delegated decision:</b>	Directorate scheme of delegation: updated 15 October 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
<b>Ward:</b>	Leominster South
<b>Consultation:</b>	Consultations undertaken by the applicant included: - Prescribed organisations as per Defra Rights Of Way Circular 1/09 – One comment from the Open Spaces Society was received regarding the width of a section of the proposed route being shown at less than 2 meters on the development plan. The development plan has been amended to show the footpath being 2 meters wide.  <ul style="list-style-type: none"> <li>• Local Member – Cllr. Marsh, has no objection to the proposal</li> <li>• Monkland Parish Council – No objections to the proposal</li> <li>• Statutory Undertakers – No objections to the proposal although there are some services in the area.</li> </ul>
<b>Decision made:</b>	THAT:  (a) A public path diversion order, for definitive footpath MK 1 in the parish of Monkland, is made in accordance with section 257 of the Town and Country Planning Act 1990, as shown in the draft order and plan TCPA97 in the Appendix 1 to this report to enable development granted planning permission to be carried out and;  (b) In the event that there are no un-withdrawn objections to the formal advertising of the order, it is then confirmed.
<b>Reasons for decision:</b>	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 MK1 in the parish of Monkland.
<b>Highlight any associated risks/finance/legal/equality considerations:</b>	<b>Community impact</b> The applicant has carried out a comprehensive pre-order consultation, which included Monkland Parish Council, to which there were no sustained objections.  <b>Equality duty</b> The existing route of MK1 passes through a gate. The proposed route

passes through one gate and a gap. Both the current and proposed routes are of similar length (41 meters and 52 meters respectively). As such, the proposal is considered to comply with the requirements of the Equality Act 2010.

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 -

- (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.

### **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 Council.

### **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 material provisions of its Rights of Way Improvement Plan

It is considered by the officer in paragraph 7 above that the criteria under section 257, are met. Once an order is made it must be advertised as prescribed in the Town and Country Planning Act 1990 and in accordance with the Town and Country Planning (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 in a newspaper circulating in the area where the land to which the order relates is located. Notice must also be served on each owner, occupier and lessee of the affected land. Statutory undertakers owning or using apparatus under, in, on or over along or across the land must also be served with notice of the making of the order. The bodies listed in the Town and Country Planning (Public Path Order) Regulations 1993 must be served with notice of the making of the order as well.

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. These are that the relevant planning permission has been granted and it is necessary to authorise the stopping up or diversion in order to enable the development to be carried out in accordance with the permission.

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>The Order will only come into effect once it has been confirmed by the Council or the Secretary of State as the case may be.</p> <p><b>Risk management</b></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 only one objection has been received as and therefore, the risk of receiving objections at Order-making stage is relatively low.</p>
<p><b>Details of any alternative options considered and rejected:</b></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><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