

Record of officer decision

Decision title:	Wildlife and Countryside Act 1981 Application for a Modification Order in the Parish of Little Birch
Date of decision:	31 March 2021
Decision maker:	Acting Assistant Director Highways and Transport / Head of Infrastructure Delivery
Authority for delegated decision:	<p>Directorate scheme of delegation: updated 25 March 2021 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>
Ward:	Birch
Consultation:	<p>The Local Ward Member Councillor Toni Fagan was sent a copy of the draft investigation report and consulted for his views on 7th October 2020. At the same time, Little Birch 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>Five landowners responded but only four returned questionnaires. All the landowners that returned questionnaires considered the route to be public, but the general view was that most of the route is not suitable for vehicular traffic and that efforts had been made by some of the landowners to turn back vehicles. The postmen and refuse collectors were examples of people challenged. However as the evidence is based on historic rather than user evidence, this aspect is not considered relevant.</p>
Decision made:	<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)(ii) of that Act to upgrade the existing Public Footpath to a Restricted Byway along the route shown on the plan in Appendix 1 between points U-T-A-B with an average width of between 8.0 and 10.0 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 Restricted Byway along the route shown on the plan in Appendix 1 between points B-C with an average width of between 3.0 and 7.0 metres as measured from the Ordnance Survey 1886/1888 and 1904 Maps, to the Definitive Map and Statement and;</p> <p>If sustained objections are received, the matter be passed to the Secretary of State for a decision.</p>
Reasons for decision:	Summarise why the decision is being taken and what matters are being taken into account. You can use bullet points. If there are relevant documents (eg a tender evaluation report) you can attach them but

	<p>remember they will be published with this record so the usual care should be taken that they are suitable for publication.</p> <p>If the decision impacts the council's priorities summarise how. In particular if the decision affects the lives of looked after children or care leavers you should explain how.</p>
<p>Highlight any associated risks/finance/legal/equality considerations:</p>	<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> <ul style="list-style-type: none"> • 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. • 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>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"> (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. <p>Resource implications</p> <p>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 Paragraph 7(1) of the 1981 Act. This may result in the holding of a public inquiry or hearing if required by the Secretary of State. If the order is subject to a public inquiry or hearing before it can be confirmed this will delay the bringing into force of the order. The Secretary of State also has the power to make modifications to the order as well as to refusing to confirm the order</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. It is also necessary for the Council to comply with the publicity requirements in the 1981 Act and advertise the making of the Order in a newspaper circulating in the locality of the land affected by the Order as well as displaying the order and map at both ends of the path affected by the Order. The Council is also required to give notice of the making of the Order to organisations prescribed in the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.</p> <p>Risk management</p> <p>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>
Details of any alternative options considered and rejected:	There are no alternative options. The decision is whether, it is reasonable to allege that rights of way may subsist or that they subsist on the balance of probabilities. 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.
Details of any declarations of interest made:	

I am an officer delegated to make the decision

Signed:

Print Name: Mairead Lane
Job Title: Assistant Director Highways & Transport /
Head of Infrastructure Delivery