

Record of officer decision

Decision title:	Highways Act 1980, Section 119 Proposed Public Path Diversion Footpath LOH4A (Part) in the Parish of Lower Harpton. Highways Act 1980, Section 25 Proposed Creation Agreement of a new Public Footpath in the Parish of Lower Harpton
Date of decision:	2 June 2021
Decision maker:	Acting Assistant Director Highways and Transport / Head of Infrastructure Delivery
Authority for delegated decision:	Directorate scheme of delegation: updated 28 April 2021 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:	Kington
Consultation:	<ul style="list-style-type: none"> • Prescribed organisations as per Defra Rights of Way Circular 1/09 – There was no objections to the proposal • Local Member – Cllr. James – No Objections • Kington Rural and Lower Harpton Parish Council – Support proposal • Statutory Undertakers – No objection from those that responded
Decision made:	<p>That:</p> <p>(a) A public path diversion order is made, for definitive footpath LOH4A in the parish of Lower Harpton, is made in accordance with Section 119 of the Highways Act 1980 as shown in the draft order and plan D520 in the Appendix 1 to this report; and</p> <p>(b) A Public Path Creation Agreement in entered into and completed by the Council and the Applicant in accordance with Section 25 of the Highways Act 1980 as shown in the draft agreement in Appendix 2 to this report</p> <p>(c) In the event that there are no unwithdrawn objections to the formal advertising of the order, it is then confirmed as satisfying the criteria in sub section (6) of the above section, for such confirmation provided the works to the new route have been completed to the Council's satisfaction.</p> <p>If sustained objections are received, the matter can be passed to the Secretary of State for a decision.</p>
Reasons for decision:	To consider an application under the Highways Act 1980, Section 119, to make a public path diversion order to divert part of footpath LOH4A

	and to consider an application to create a new footpath in the parish of Lower Harpton
<p>Highlight any associated risks/finance/legal/equality considerations:</p>	<p>Community impact A comprehensive pre-order consultation has been carried out by consultants employed by Powys County Council on both sides of the border which included the Parish Council, local user groups and statutory undertakers to which there were no objections. See Appendix 4 for response summary table.</p> <p>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.</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 The proposed and existing routes are broadly the same length and are both level and accessible. Therefore, it is considered there is a positive impact on Herefordshire Council's Equality duty.</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> <ol 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 The applicant has agreed to pay for the advertising costs associated with this order as well as all the costs associated with bringing the new route into being which includes the construction and ongoing maintenance of a new footbridge and installation of a self-closing pedestrian gate. As this is in the public interest it is considered appropriate that any expenses incurred in making the order, excluding advertising costs, will be met by the budget allocated to the rights of way service through the annual plan. 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 and Powys County Council.</p> <p>Legal implications 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</p>

	<p>Improvement Plan.</p> <p>It is considered that the criteria under Section 119, referred to in paragraph 7 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.</p> <p>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) of the Highways Act 1980 are met. These are listed in paragraph 7 above.</p> <p>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> <p>The Council have a power under section 25 of the Highways Act to enter into creation agreements with the landowner.</p> <p>Risk management</p> <table border="1" data-bbox="544 920 1476 1328"> <thead> <tr> <th data-bbox="544 920 1145 987">Risk / opportunity</th> <th data-bbox="1145 920 1476 987">Mitigation</th> </tr> </thead> <tbody> <tr> <td data-bbox="544 987 1145 1328"> <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> </td> <td data-bbox="1145 987 1476 1328"> <p>A comprehensive pre-order consultation has been carried out by the applicant, to which no objections have been received and, therefore, the risk of receiving objections at Order-making stage is relatively low.</p> </td> </tr> </tbody> </table>	Risk / opportunity	Mitigation	<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>A comprehensive pre-order consultation has been carried out by the applicant, to which no objections have been received and, therefore, the risk of receiving objections at Order-making stage is relatively low.</p>
Risk / opportunity	Mitigation				
<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>A comprehensive pre-order consultation has been carried out by the applicant, to which no objections have been received and, therefore, the risk of receiving objections at Order-making stage is relatively low.</p>				
<p>Details of any alternative options considered and rejected:</p>	<p>Under the provisions of Sections 25 and 119 of the Highways Act 1980 the Council has the discretionary power to make diversion orders and creation agreements but has no duty to do so. The Council could therefore reject the applications on the grounds that they do not contribute sufficiently to the wider ambitions and priorities of the Council. As the application meets the tests set out in Sections 25 and 119 of the Highways Act 1980 it may be considered unreasonable for the Council to not make an order.</p>				
<p>Details of any declarations of interest made:</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