

## Record of officer decision

<b>Decision title:</b>	Highways Act 1980, Section 119 Proposed Public Path Diversion Order Footpath BZ27 (Part) in the Parish of Bosbury.
<b>Date of decision:</b>	3 June 2021
<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 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
<b>Ward:</b>	Hope End
<b>Consultation:</b>	Consultations undertaken by the included: - <ul style="list-style-type: none"> <li>• Prescribed organisations as per Defra Rights of Way Circular 1/09 – No Objections</li> <li>• Local Member – Cllr. Johnson – No Objection to the proposal</li> <li>• Bosbury Parish Council – Support the proposal</li> <li>• Statutory Undertakers – No Objections</li> </ul>
<b>Decision made:</b>	That: <p><b>(a)</b> A public path diversion order, for definitive Footpath BZ27 in the parish of Bosbury, is made in accordance with Section 119 of the Highways Act 1980 as shown in the draft order and plan D521 in Appendix 1 attached to this report; and</p> <p><b>(b)</b> 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.</p> <p><b>(c)</b> If sustained objections are received, the matter can be passed to the Secretary of State for a decision.</p>
<b>Reasons for decision:</b>	To consider an application under the Highways Act 1980, Section 119, to make a public path diversion order to divert part of Footpath BZ27(part) in the parish of Bosbury.
<b>Highlight any associated risks/finance/legal/equality considerations:</b>	<p><b>Community impact</b> A comprehensive pre-order consultation has been carried out by the applicant which included Bosbury Parish Council, local user groups and statutory undertakers. Bosbury Parish Council were initially opposed to the application on the basis that there is not a registered owner of the land over which the proposed footpath passes, and they had concerns about encouraging future development. However, following a Parish Council meeting at which the applicants explained the proposal in detail, the Parish Council removed their objection.</p> <p><b>Environmental Impact</b></p>

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 completed by sustainable modes of travel – walking, cycling, public transport

### **Equality duty**

The proposed and existing routes are broadly the same length. The existing route crosses a number of ditches and fences and is prone flooding. The new route runs along a compacted stone track and is free of obstructions other than a field gate. Therefore, it is considered there is a positive impact on Herefordshire Council's Equality duty.

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 the advertising costs associated with this order as well as all the costs associated with bringing 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 budget allocated to the rights of way service through the annual plan.

### **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 Improvement Plan.

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.

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.

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

	<p>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>Herefordshire Council's legal team were consulted on the implications of the proposed route running along unregistered land. The conclusion was that although there was not anything within the legislation preventing a diversion being carried out on unregistered land, it could increase the risk of a compensation claim should a landowner be subsequently forthcoming and be aggrieved of an order being made. All landowners who have an interest along the route have signed compensation waiver forms and given their authorisation for the proposal. A search has also shown that the land over which the complete length of the proposed route is now either owned or is in the process of being registered.</p> <p>If there are no objections and the order is confirmed by the Council it may be challenged by way of judicial review. The time period for challenge is six weeks from the date of confirmation of the order.</p> <p><b>Risk management</b></p> <table border="1"> <thead> <tr> <th data-bbox="547 790 1054 857">Risk / opportunity</th> <th data-bbox="1054 790 1474 857">Mitigation</th> </tr> </thead> <tbody> <tr> <td data-bbox="547 857 1054 1193">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.</td> <td data-bbox="1054 857 1474 1193">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.</td> </tr> <tr> <td data-bbox="547 1193 1054 1391">There is a risk that a landowner may claim compensation under s.28 of the Highways Act 1980 particularly as there are discrepancies about the landownership over which the proposed footpath passes</td> <td data-bbox="1054 1193 1474 1391">All landowners with an interest of the route have signed a Compensation Waiver Form</td> </tr> </tbody> </table>	Risk / opportunity	Mitigation	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.	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.	There is a risk that a landowner may claim compensation under s.28 of the Highways Act 1980 particularly as there are discrepancies about the landownership over which the proposed footpath passes	All landowners with an interest of the route have signed a Compensation Waiver Form
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<p><b>Details of any alternative options considered and rejected:</b></p>	<p>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.</p>						
<p><b>Details of any declarations of interest made:</b></p>	<p>If any officers or members involved or consulted in the decision-making have declared an interest you should include the declaration here.</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