

Record of officer decision

Decision title:	Town and Country Planning Act 1990, Section 257 Proposed Public Path Diversion Order Footpath PR18 (Part) in the Parish of Peterchurch and Highways Act 1980, Section 119 Proposed Public Path Diversion Order Footpath PR18A in the Parish of Peterchurch
Date of decision:	16 th November 2021
Decision maker:	Interim Service Director Highways, Environment & Waste
Authority for delegated decision:	Directorate scheme of delegation: updated 22 October 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:	Golden Valley North
Consultation:	Consultations undertaken by the applicant included: - Prescribed organisations as per Defra Rights Of Way Circular 1/09 – <ul style="list-style-type: none"> • Local Member – Cllr. Hewitt has no objection to the proposal • Peterchurch Parish Council – No objections to the proposal • Statutory Undertakers – No objections to the proposal • User Groups – No objections to the proposal
Decision made:	<ul style="list-style-type: none"> • A public path diversion order, for definitive footpath PR18 in the parish of Peterchurch, is made in accordance with section 257 of the Town and Country Planning Act 1990, as shown in the draft order and plan TCPA100 in Appendix 1 to this report to enable development granted planning permission to be carried out and; • A public path diversion order, for definitive footpath PR18A in the parish of Peterchurch is made in accordance with section 119 of the Highways Act 1980, as shown in the draft order and plan D531 in appendix 2 to this report and; • In the event that there are no un-withdrawn objections to the formal advertising of the order, it is then confirmed. • If sustained objections are received, the matter can be passed to the Secretary of State for a decision.
Reasons for decision:	To consider applications under the Town and Country Planning Act 1990, section 257 and section 119 of the Highways Act 1980, to make public path diversion orders to divert parts of footpaths PR18 and PR18A in the parish of Peterchurch.
Highlight any associated risks/finance/legal/equality considerations:	<p>Community impact The applicant has carried out a comprehensive pre-order consultation, which included Peterchurch Parish Council, to which there were no sustained objections.</p> <p>Equality duty The existing routes of PR18 and PR18A pass over a stile. There are no stiles or gates on the proposed route. Both the current and proposed routes are of similar length). As such, the proposal is considered to comply with the requirements of the Equality Act 2010.</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"> • eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; • advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; • foster good relations between persons who share a relevant protected characteristic and persons who do not share it. <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. 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> <p>Resource implications The applicant has agreed to pay for all administration and advertising costs associated with the Town and Country Planning Act 1990 order and any works necessary to bring the new route into being. The cost associated with the Highways Act 1980 Order will be met by the budget allocated to the Public 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 Council.</p> <p>Legal implications Section 257 of the Town and Country Planning Act 1990. 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</p>
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	<p>by way of written representations before making a decision on whether or not to confirm the order.</p> <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>Legal implications section 119 of the Highways Act 1980</p> <p>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.</p> <p>It is considered that the criteria under Section 119, referred to in paragraph 10 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 to have regard to the effect the diversion would have on public enjoyment of the path or way as a whole, the effect the proposed order would have as respects other land served by the existing public right of way, and the effect of the new public right of way created by the order would have as respects the land over which the new right is created.</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>Risk management</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 no objections have been received as and therefore, the risk of receiving objections at Order-making stage is relatively low.</p>
Details of any alternative options considered and rejected:	Under the provisions of section 257 of the Town and Country Planning Act 1990 and section 119 of the Highways Act 1980 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.
Details of any declarations of interest made:	N/A

Signed..... Date: