

## Record of officer decision

<b>Decision title:</b>	<b>Highways Act 1980, Section 119</b> <b>Proposed Public Path Diversion Footpath WA19 (Part) in the Parish of Walford and RR11(Part) in the Parish of Ross Rural</b>
<b>Date of decision:</b>	25 <sup>th</sup> November 2021
<b>Decision maker:</b>	Interim Service Director - Highways, Environment & Waste
<b>Authority for delegated decision:</b>	<p>Directorate scheme of delegation: updated <b>22 October 2021</b> 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>
<b>Ward:</b>	Kerne Bridge, Ross on Wye East, Penyard
<b>Consultation:</b>	<p>Consultations undertaken by the included: -</p> <ul style="list-style-type: none"> <li>• Prescribed organisations as per Defra Rights of Way Circular 1/09 – There was no objections to the proposal</li> <li>• Local Members – Cllr. Wilding, Cllr. Watson, Cllr Symonds– No objection to the proposal by Cllr Wilding. Concerns expressed by Cllr’s Watson and Symonds</li> <li>• Ross Rural and Western Under Penyard Parish Council’s - No objection to the proposal.</li> <li>• Walford Parish Council – Unable to respond</li> <li>• Statutory Undertakers – No objections</li> </ul>
<b>Decision made:</b>	<p><b>(a)</b> A public path diversion order, for definitive footpaths WA19 in the parish of Walford and RR11 in the parish of Ross Rural, is made in accordance with section 119 of the Highways Act 1980 as shown in the draft order and plan D523 in the Appendix 1 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 parts of Public Footpaths WA19 in the parish of Walford and RR11 in the Parish of Ross Rural.
<b>Highlight any associated risks/finance/legal/equality considerations:</b>	<p><b>Community impact</b></p> <p>A comprehensive pre-order consultation has been carried out by the applicant which included Walford, Western Under Penyard and Ross Rural Parish Councils. Ross on Wye Rural and Wester Under Penyard had no objections to the proposal. Walford Parish Council were unable to respond due not being able to form a quorum on the matter. The Local footpath Officer for Walford parish Council did comment on the proposal as a private individual but those</p>

comments have not been included. See Appendix 4 for response summary.

### **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

### **Equality duty**

The proposed and existing routes are broadly the same length. The existing route is inaccessible and is obstructed by dog kennels and trees. The new route requires some localised levelling, which the landowner has agreed to, has no obstructions and runs along a compacted stone forestry track for the majority of its length. 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 all 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.

If Herefordshire Council opted to pursue the enforcement route, there is a risk that considerable resources, beyond those allocated to Public Rights of Way through the Annual plan, would be required to pursue the matter through the courts.

### **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.

	<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><b>Risk management</b>  Risk / opportunity  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><b>Mitigation</b>  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>
<b>Details of any alternative options considered and rejected:</b>	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.
<b>Details of any declarations of interest made:</b>	N/A

I am an officer delegated to make the decision

**Signed:**

**Print Name:** Phil Crossland

**Job Title:** Interim Service Director – Highways, Environment & Waste