

Record of officer decision

Decision title:	Highways Act 1980, Section 119 Proposed Public Path Diversion Footpath WQ6 (Part) and WQ8 (Part) in the Parish Wigmore.
Date of decision:	18 th January 2022
Decision maker:	Interim Service Director – Highways, Environment & Waste
Authority for delegated decision:	Directorate scheme of delegation: updated 23 December 2021 Directorate: Economy and Environment, 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:	Mortimer
Consultation:	Consultees Consultations undertaken by the included: - <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. Gandy– Supports proposal • Wigmore Parish Council – Supports proposal • Statutory Undertakers – No objection from those that responded
Decision made:	(a) A public path diversion order, for definitive footpaths WQ6 and WQ8 in the parish of Wigmore, is made in accordance with Section 119 of the Highways Act 1980 as shown in the draft order and plan D517 in the Appendix 1 to this report; and (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. (c) If sustained objections are received, the matter can be passed to the Secretary of State for a decision.
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 footpaths WQ6 and WQ8 in the parish of Wigmore.
Highlight any associated risks/finance/legal/equality considerations:	Key considerations <ol style="list-style-type: none"> 1. Herefordshire Council are putting forward the proposal in the public interest in order to regularise the situation on the ground. Currently footpaths WQ6 and WQ8 follow the line shown at A-E-C on the attached plan which is not on the legal line which follows D-B-C. There is currently a bridge at point E which is out of repair and requires replacement. However, before any budget is committed to replacing the bridge, the footpaths need to be diverted. 2. The river crossing point on the legal line (point B) is not considered suitable for a footbridge without considerable expense due to its low-lying nature and the requirement to construct a bridge above the flood level. 3. The proposed diversion route has been in place a number of years

and is used by local walkers.

4. The local member, Cllr. Gandy has no objection to the proposal.
5. The proposed diversion meets the specified criteria as set out in Council policy and Section and 119 of the Highways Act 1980, in particular that: -
 - The proposal is expedient as it benefits the owner of the land crossed by the existing path.
 - The proposal does not alter the point of termination of the path.
 - It is expedient to confirm the order, given the proposal is not substantially less convenient to the public, and it is expedient, having regard to the effect which (i) the diversion will have on the public enjoyment of the path as a whole, including any compensation which becomes payable (ii) the coming into operation of the order would have as respects other land served by the existing right of way and (iii) any effect the new public right of way created by the order would have as respects the land over which the new right is created, including any compensation payable.
6. The cost of replacing the footbridge and all expenses relating to the diversion will be met by the budget allocated to the public rights of way service through the annual plan.

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 2 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 and are both level and accessible. 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

As this is in the public interest it is considered appropriate that any expenses incurred in making the order and replacing the bridge 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.

Legal implications

1. 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.
2. It is considered that the criteria under Section 119, referred to in paragraph 6 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 in a newspaper circulating in the locality of the land affected by the making of the order.
3. 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 6 above.
4. 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.

Risk management

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.

There is a risk the landowners may claim compensation against the council as allowed for under s.28 of the Highways Act 1980.

Mitigation

5. 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>There is a risk the landowners may claim compensation against the council as allowed for under s.28 of the Highways Act 1980.</p>	<p>Both effected landowners have agreed to the proposal and one of the landowners has signed a compensation waiver form against a claim under s.28. There is a risk therefore that the second landowner may claim compensation. However this risk is considered low as the landowner is mainly concerned about damage being caused by the works.</p>

Details of any alternative options considered and rejected:	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 proposal 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.
Details of any declarations of interest made:	If any officers or members involved or consulted in the decision-making have declared an interest you should include the declaration here.

Signed..... Date: