

## Record of officer decision

<b>Decision title:</b>	<b>Highways Act 1980, Section 119</b> <b>Proposed Public Path Diversion Order YP6 in the Parish of Yarpole</b>
<b>Date of decision:</b>	
<b>Decision maker:</b>	<b>Interim Service Director for Highways, Environment &amp; Waste</b>
<b>Authority for delegated decision:</b>	Directorate scheme of delegation: updated <b>23 December 2021</b> 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
<b>Ward:</b>	Bircher
<b>Consultation:</b>	Consultations undertaken by the applicant for the original application included: - <ul style="list-style-type: none"> <li>• Prescribed organisations as per Defra Rights Of Way Circular 1/09</li> <li>• Local Member – Cllr. Bowen</li> <li>• Yarpole Group Parish Council</li> <li>• Statutory Undertakers</li> </ul>
<b>Decision made:</b>	THAT: <ol style="list-style-type: none"> <li>(a) A public path diversion order, for definitive footpath YP6 in the parish of Yarpole, is made in accordance with section 119 of the Highways Act 1980 as shown in the draft order and plan D539 in the Appendix to this report</li> <li>(b) The current order made under the Town and Country Planning Act 1990, section 257 is formally abandoned</li> <li>(c) In the event that there are no un-withdrawn objections to the formal advertising of the order, it is then confirmed and;</li> <li>(d) If sustained objections are received, the matter can be passed to the Secretary of State for a decision.</li> </ol>
<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 YP6 in the parish of Yarpole and to formally abandon the current public footpath diversion order made under section 257 of the Town and Country Planning Act 1990
<b>Highlight any associated risks/finance/legal/equality considerations:</b>	<b>Key considerations</b> <ol style="list-style-type: none"> <li>1. An order was made on the 24<sup>th</sup> January 2022 to divert Public Footpath YP6 in the Parish of Yarpole under section 257 of the Town and Country Planning Act 1990 following approval by Herefordshire Council on the 25<sup>th</sup> October 2021 (see appendix 2 for Record of Officer Decision).</li> <li>2. The act stipulates that the proposed diversion must be for development purposes</li> <li>3. The current order made under the Town and Country Planning Act 1990, section 257 is required to be formally abandoned due to recent discussions between Herefordshire Council Legal Services, Public Rights of Way Officers and the Planning enforcement Officer which determined that the development is considered to be subsequently built with the developer having built dwellings over the current legal line before an order was confirmed and it is the opinion of both the planning</li> </ol>

department and the public rights of way service that the legal test can no longer be met. The guidelines used in matters such as this, although subjective, are whether the development be regarded as substantially complete and whether the order under the Town and Country Planning Act 1990 is unable to be confirmed. The consensus in this case is that the development is substantially complete in so much as it effects the right of way.

4. As the development, in so much as it affects the public right of way, is substantially complete, the current order, made under s.257 of the Town and Country Planning Act 1990 should be abandoned, and a new order be made under section 119 of the Highway Act 1980.
5. The developer is aware of this and has submitted a new footpath diversion application under the Highways Act
6. The applicant has agreed to pay for the advertising of the order, to fully reimburse the Council's costs in processing the matter and to defray any compensation that might subsequently be claimed and become payable.
7. As the new order will be advertised and all the statutory consultees consulted, it is not proposed that further consultation takes place. The proposed diversion route has not changed.
8. The proposed diversion meets the specified criteria as set out in Council policy and Section 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.

#### **Community impact**

A comprehensive pre-order consultation was carried as part of the original application out which included Yarpole Parish Council, local user groups and statutory undertakers to which there were no objections.

#### **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 (can't really change this as it is HC standard wording) by sustainable modes of travel – walking, cycling, public

#### **Equality duty**

1. The existing route is obstructed by buildings. 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 administration and advertising costs associated with this order and any works necessary to bring 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 Council.

**Legal implications**

2. 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.
3. 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.
4. 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.
5. 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 that if the current order is confirmed that the Council may receive a legal challenge.

**Mitigation**

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.

The current order is abandoned and a new one made.

**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 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: Mark Averill

Job Title: Interim Service Director for Highways, Environment & Waste