

Record of operational decision

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| Decision title: | Wildlife and Countryside Act 1981 Application for a Modification Order in the Parish of Dorstone M334 |
| Date of decision: | 15/07/2025 |
| Decision maker: | Engineering Manager |
| Authority for delegated decision: | Directorate scheme of delegation: updated 23 December 2021 Directorate: Economy and Place, section 75. To act on behalf of the council in respect of the legislation specified in the foregoing: Highways Act 1980. |
| Ward: | Golden Valley North |
| Consultation: | As the route was disputed by the landowners some years ago, and correspondence entered into previously, a formal consultation has not been carried out. A copy of the Consultant's Research Report has been sent to the affected landowners for information and to the local member. |
| Decision made: | THAT: a) An order be made under the provisions of section 53(2)(b) of the Wildlife and Countryside Act 1981, in consequence of an event under section 53(3)(b) and section 53(3)(C)(i) of that Act to add a Byway Open to All Traffic along the route shown A- B-C-D on the plan in the covering report at Appendix A. 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 section 6 (1), schedule 15 of the Wildlife and Countryside Act, for such confirmation and; c) If sustained objections are received, the matter will be passed to the Secretary of State for a decision. |
| Reasons for decision: | The Definitive Map and Statement are conclusive legal records of the status, position and width of public rights of way and Herefordshire Council has a legal duty under section 53 of the 1981 Act to keep it under continuous review. The Council must make Orders to modify the Map and Statement where evidence is discovered which shows that there is sufficient evidence to show public rights may exist where none are currently recorded. This case has arisen following reports of obstructions on the route of the unclassified road U75235. When the landowners were contacted regarding the obstructions, it was found that they disputed the route as it has never been evident on the ground in their lifetime. Reports were written about the route on both sides, but the matter has remained unresolved for several years. When further complaints were received regarding the obstructions, the Council engaged a consultant to advise on the status of the route. Following extensive research of historical documents and, with consideration of the various reports that had been previously undertaken, the Consultant's recommendation was to process a Definitive Map Modification Order to add a Byway Open to All Traffic to the Definitive Map and Statement. |

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| | <p>This would conclude the matter and would mean that a resolution could be found. The only alternative would be a court case.</p> <p>The Consultant's Research Report is attached at Appendix B together with all the appendices. Appendix 3 is not attached as it is the landowners' report which they have requested is not made public at this time.</p> |
| <p>Highlight any associated risks/finance/legal/equality considerations:</p> | <p>Community impact: Whilst there is considered to be no adverse community impact in respect of this decision, it cannot be a relevant consideration under section 53 of the 1981 Act.</p> <p>Equality: Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:</p> <p style="padding-left: 40px;">A public authority must, in the exercise of its functions, have due regard for the need to:</p> <ul style="list-style-type: none"> (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. <p>The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Whilst there is considered to be no impact on our equality duty by this recommendation, it is not a relevant consideration under section 53 of the 1981 Act.</p> <p>Finance: This is not a relevant consideration under section 53 of the 1981 Act. The Council cannot take financial considerations into account in determining whether or not to make Definitive Map Modification Orders. However, the costs in this respect would be far less than a court case.</p> <p>The most time-consuming part of the process has already been carried out which is the historical research. Once the decision has been made, an order will be sealed and advertised. The estimated cost of the advert is approximately £500. If no objections are received (or received and subsequently withdrawn) then a further advert will be made for confirmation at a similar cost.</p> <p>If objections are received to the order, the matter will then require referral to the Secretary of State for a decision. This could be decided by written representations, a hearing or a public inquiry. It is difficult to estimate the costs for these matters as it is dependent on the numbers of objections and/or representation or support but a rough guide would be approximately £6,000- £7,000 for a public inquiry (including the engagement of PROW advocate to present the case and room hire etc).</p> <p>The costs associated with the making of the order as recommended will be absorbed by the current PROW revenue budget.</p> |

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| | <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.</p> <ul style="list-style-type: none"> • 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>Resource implications: This is not a relevant consideration under section 53 of the 1981 Act. The Council cannot take financial considerations into account in determining whether or not to make Definitive Map Orders. The cost of carrying out the process, however, would be less than a court case.</p> <p>Legal: Herefordshire Council as surveying authority for rights of way has a duty under section 53 of the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to modify it by order where relevant evidence is discovered.</p> <p>In this case, evidence has been discovered to reasonably allege that the route indicated as A- B- C- D on the plan at Appendix A has Byway Open to All Traffic rights and an order should be made to add it to the Definitive Map and Statement.</p> <p>Risk Management: As stated above, if objections are received to the order, the matter will then require referral to the Secretary of State for a decision which will incur a cost to the Council.</p> |
| <p>Details of any alternative options considered and rejected:</p> | <p>The decision is to determine if, on the balance of probabilities, public rights subsist (or are reasonably alleged to subsist) and what those rights are, along the route shown A-B-C-D on the plan contained in Appendix A and as set out in the Consultant's Research Report at Appendix B. In determining this matter, the Council is carrying out a quasi-judicial function in accordance with the provision or section 53 and schedules 14 and 15 of the 1981 Act.</p> <p>In any case, where evidence has been discovered showing the existence of a public right of way that is not shown on the Definitive Map or Statement, Section 53 of the 1981 Act requires the Council to make such modifications to the map and statement as appear to be required. Therefore, having considered the evidence available the Council does not have viable alternative options. However, even if the Council did have discretion as to whether or not to proceed with the DMMO, the alternative options are:</p> <ol style="list-style-type: none"> 1) to do nothing, whereby public rights will be omitted from the Definitive Map and Statement; 2) to amend any part of the decision; or 3) to have a costly court case to resolve the matter. <p>Having considered each of these potential alternative options the Council has determined that the fastest and most cost-effective means of resolving the longstanding issues at this site would be to proceed with the DMMO. On that basis it is reasonable to conclude that, notwithstanding the statutory obligations imposed by the legislation, each alternative would have been rejected in favour of proceeding with a DMMO on the basis of proportionality and the outcome would be the same.</p> |

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| 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. N/A |
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Engineering Manager