

Record of Officer Decision

Decision title:	Highways Act 1980, Section 119 Proposed Public Path Diversion Order Footpath CW29C in the Parish of Colwall Highways Act 1980, Section 25 Public Path Creation Agreement, Land at Colwall Orchard and Kimberley House
Date of decision:	15 January 2026
Decision maker:	Group Manager – Streetscene, Public Rights of Way and Traffic Management
Authority for delegated decision:	Directorate scheme of delegation: 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:	Hope End
Consultation:	Consultation undertaken by the applicant included: Prescribed organisations as set out in the Defra Rights of Way Circular 1/09 – No objections Local Member Councillor Heathfield - No objection to the proposal Colwall Parish Council – No objection to the proposal Statutory Undertakers – No objections to the proposal
Decision made:	THAT: (a) A public path diversion order, for definitive footpath CW29C in the parish of Colwall, is made in accordance with section 119 of the Highways Act 1980, as shown in the draft order and plan D568 in Appendix 1 attached to this report and; (b) In the event that there are no un-withdrawn objections to the formal advertising of the order, it is then confirmed. (c) If sustained objections are received, the matter can be passed to the Secretary of State for a decision. (d) If the diversion order is capable of confirmation, a public path creation agreement is made under section 25 of the Highways Act 1980 as shown in the draft agreement and plan D568 in Appendix 1 attached to this report to create a new footpath.
Reasons for decision:	The rights of way department undertook to divert the right of way following a request from the applicant because “ <i>There is currently no public footpath access to the Community Orchard at Colwall Village Garden owned by the charity Colwall Orchard Trust, known as Colwall Orchard Group. Access is only via the narrow highway - Old Church Road. Creating this new public footpath will allow public access to the Community Orchard. The Community Orchard is open for all to explore and enjoy. In addition Colwall CofE primary school pupils regularly visit the orchard and the new footpath means that they do not have to walk along a section of Old Church Road which involves walking along a dangerous bend.</i> ”

	<p><i>In return for creating the new footpath the owner of Kimberley House has requested diverting the existing footpath CW92C into the adjacent field."</i></p> <p>The existing route of CW29C runs across a field where there has been regular issues of users deviating from the path. The proposed route diverts the right of way through a neighbouring meadow which is more open and provides an equally convenient route.</p> <p>It is considered that the legal tests for this diversion have been satisfied as in the interest of both the landowner and users it is expedient to divert the footpath; the proposal provides an equally convenient route through a meadow featuring a wide variety of wildflowers and provides improved access through use of gaps instead of gates.</p> <p>The proposed route will not be substantially less convenient as the proposed route is only marginally longer than the existing route and will offer improved access through a gap instead of a kissing gate on the existing route.</p> <p>Alongside the diversion, the landowner will dedicate a new footpath by agreement. This will be used as part of a safer walking route to school for local children. The new path will also provide access to the community orchard for users to enjoy.</p> <p>The applicant has agreed to pay the costs associated with advertising the order and any works required.</p> <p>The applicant has carried out a pre-order consultation based on a proposed route (see Appendix 2). There were no objections to the proposal.</p> <p>The Local Member, Councillor Heathfield, has no objections to the proposal.</p> <p>The proposed diversion meets the specified criteria set out in Council policy and in accordance with the provisions of section 119 of the Highways Act 1980 in that:</p> <ul style="list-style-type: none"> • The proposal is expedient as it benefits the owner of the land crossed by the existing 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.
<p>Highlight any associated risks/finance/legal/equality considerations:</p>	<p>Community impact: The applicant has carried out a comprehensive pre-order consultation, which included Colwall Parish Council, local user groups, and statutory undertakers, to which there were no sustained objections.</p> <p>Equality: Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:</p> <p>A public authority must, in the exercise of its functions, have due regard to the need to:</p>

- 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.

The majority of public rights of way are in a very rural environment, often remote, with uneven surfaces and varying gradients. There are stiles and gates on many paths which are necessary for stock control. There are also bridges and steps on many paths which aid access to paths by providing crossings for streams and rivers and to help with steep gradients. The nature of the paths means that access may be difficult for members of the public with mobility issues or a disability.

Diversion/creation orders seek to remove stiles wherever possible and improve access by installing gates in their place which allow use by a wider group of people. The Rights of Way Improvement Plan also aims to improve access to public rights of way in this way.

For this proposal the gradients of the existing and proposed routes on the proposed diversion are similar. There is one kissing gate on the existing route and two gaps on the proposed route resulting in a positive impact on users. The proposed route takes users out of a private field and through a wild meadow resulting in a potentially positive impact.

The proposed footpath creation will provide a pleasant and safe route for children to walk to school through a community orchard which is a positive impact.

Finance:

All administration and advertising costs associated with this order are to be covered by the applicant together with the creation of three gaps. 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.

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.

Resource implications:

The landowner has agreed to defray any compensation that may become payable and the affected landowner has agreed to waive their right to compensation which may become payable under the Highways Act 1980 S.28 as applied by S.119(5) as amended in consequence of the coming into operation of any said diversion. 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:

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

	<p>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 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.</p> <p>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) – (c) and 6A(b) of the Highways Act 1980 are met. These are listed in 'Reasons for Decision' above.</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: 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 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 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.
Details of any declarations of interest made:	<p>If any officers or members involved or consulted in the decision-making have declared an interest you should include the declaration here.</p> <p>N/A</p>

Signed:
Date: 15 January 2026

Please ensure that signatures are redacted before publishing.