

Record of Officer Decision

Decision title:	Highways Act 1980, Section 119 Proposed Public Path Diversion Order Footpath KS31 in the Parish of Kingstone to be known as Footpath AN32 Allensmore
Date of decision:	27 April 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:	Wormside and Stoney Street
Consultation:	<p>Consultation on the initial route was undertaken by the landowner and included:</p> <p>Prescribed organisations as set out in the Defra Rights of Way Circular 1/09 – No objections.</p> <p>Local Members Councillors Thomas and Hitchener - No objection to the proposal.</p> <p>Kingstone Parish Council, Allensmore Parish Council, Eaton Bishop Parish Council and Clehonger Parish Council – No objection to the proposal</p> <p>Statutory Undertakers – No objections to the proposal.</p> <p>This was followed by a consultation undertaken by PROW with the Parish Councils, Opens Spaces Society and Ramblers' Association on a revised route to which there were no objections.</p>
Decision made:	<p>THAT:</p> <p>(a) A public path diversion order, for definitive footpath KS31 in the parish of Kingstone, is made in accordance with section 119 of the Highways Act 1980, as shown in the draft order and plan D573 in Appendix 1 attached to this report and;</p> <p>(b) In the event that there are no un-withdrawn objections to the formal advertising of the order, it is then confirmed.</p> <p>(c) If sustained objections are received, the matter can be passed to the Secretary of State for a decision.</p>
Reasons for decision:	<p>The rights of way department undertook to divert the right of way following receipt of a Section 56 notice for the path being out of repair which was served by the Open Spaces Representative for the area.</p> <p>The path runs along the western edge of a brook and is very narrow and overgrown. Sections have been lost due to erosion by the brook</p>

and there is no footbridge at the northern end to cross it before it meets the road.

As it would be difficult to reinstate the eroded sections, and it is likely that further sections would be lost in the future, to ensure the longevity of the path it was decided to divert it to a location further away from the brook.

The landowner carried out a pre-order consultation to which there were no objections. However, the tenant farmer did not agree to the route and so a revised route was agreed with all parties. The PROW Team then carried out a pre-order consultation with the four Parish Councils, Open Spaces Society and Ramblers' Association based on the revised route shown on the Plan at Appendix 1. There were no objections to the proposal. The final responses are shown at Appendix 2.

The final proposal agreed with the affected landowners will divert the path to a parallel location on the eastern boundary of the field before cutting through into the adjacent field and then to the road. This route will not be affected by erosion from the brook and would be more open with better views.

The proposed roadside access on the busy B4349 is considered to be safer for users as there is better visibility in each direction than the existing access point.

The length is similar on the existing and proposed, and the surface is easier to walk on the proposed with a better width, however, there would be additional gates due to stock control. Overall, it is considered that the proposed path would be equally convenient to users.

The Council has agreed to pay the costs associated with advertising the order and any works required. This is because the existing path would require a footbridge to be installed, whereas the proposed path only requires three kissing gates. It would, therefore, be less costly for the Council to carry out the diversion and install the gates than it would be to clear the upgrowth and install a footbridge.

The Local Members, Councillors Thomas and Hitchener, have no objections to the proposal.

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:

The proposal is expedient as it benefits the public in providing a longer lasting and unobstructed route which is not detrimental to the owners 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

	<p>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>
<p>Highlight any associated risks/finance/legal/equality considerations:</p>	<p>Community impact: The landowner and the PROW Team carried out a comprehensive pre-order consultation, which included Kingstone, Allensmore, Eaton Bishop and Clehonger Parish Councils, local user groups, and statutory undertakers, to which there were no objections.</p> <p>Equality: 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:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>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.</p> <p>For this proposal the existing path has a pedestrian gate and requires a footbridge. The proposed route will need three kissing gates which is slightly less convenient. However, the proposed diversion will provide a route that is unobstructed by the brook and which has a safer roadside access resulting in an overall positive impact for the public on the rights of way network. As such, the proposal is considered to comply with the requirements of the Equality Act 2010.</p> <p>Finance: All administration and advertising costs associated with this order are to be covered by the Council together with any works necessary to</p>

put the new path on the ground. 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 Council will defray any compensation that may become payable, however, the affected landowners have 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 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 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.

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.

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

	<p>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 must be borne by the Council.</p> <p>In this case a comprehensive pre-order consultation has been carried out by the landowner and the PROW Team, to which no objections have been received and, therefore, the risk of receiving objections at Order making stage is relatively low.</p>
<p>Details of any alternative options considered and rejected:</p>	<p>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 diversion on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council. As the diversion 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. The diversion will also resolve the Section 56 notice.</p>
<p>Details of any declarations of interest made:</p>	<p>If any officers or members involved or consulted in the decision-making have declared an interest you should include the declaration here. N/A</p>

Signed:

Date: 27 April 2026

Please ensure that signatures are redacted before publishing.

Appendix 1

