

CYNGOR SIR POWYS COUNTY COUNCIL

PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE

18th February 2018

REPORT BY: SENIOR MANAGER, COUNTRYSIDE, CONTRACTED AND CULTURAL SERVICES

**SUBJECT: Wildlife and Countryside Act 1981, section 53
Proposed delegation of decision-making for
Definitive Map Modification Order case – Route from
Bankshead, Shropshire to Shepherdswhim, Powys**

REPORT FOR: RECOMMENDATION TO FULL COUNCIL

Proposal to delegate decision-making for Definitive Map Modification Order case - Route from Bankshead, Shropshire to Shepherdswhim, Powys

Background:

1. An application was made to Shropshire Council on 4th May 2014 for a Definitive Map Modification Order, to add a bridleway to the Definitive Map and Statement. The application route crosses the county boundary between Shropshire and Powys.
2. The claimed route is shown on the plan at appendix A; it is in the parish of Bishop's Castle in Shropshire and community of Churchstoke in Powys. It starts at Bankshead (OS Grid Reference SO 307,899) and runs towards Pentre Cwm in Shropshire. It then crosses the county border into Powys, where it ends on the county road near Shepherdswhim (OS Grid Reference SO 295,905.)
3. Determining these cases is a statutory duty of both Councils, each being surveying authorities for the purpose of section 53 of the Wildlife and Countryside Act 1981.
4. Although an application to record this cross border route has been made to Shropshire County Council, no corresponding application has been made to Powys County Council. However, none is required; the process can be initiated without an application, if there is 'discovery of evidence' that the Definitive Map and Statement may need to be modified.
5. Rather than duplicate the work needed to research the sections of the route within Shropshire and Powys, officers of Shropshire County Council have researched the evidence for the whole route on behalf of both authorities. They have carried out informal 'pre-Order' consultation, involving the affected landowners, path user groups, the relevant Community and Parish Councils, Local Members and others.

6. An officer of Shropshire Council has prepared a report, summarising their findings. The next stage is for one, or both, Councils to decide whether legal Order(s) should be made or not, in respect of the addition of sections of public rights of way in Powys and in Shropshire.
7. One, or both of Powys County Council and Shropshire Council need to decide whether legal Order(s) should be made or not, in respect of the sections of the route in Powys and in Shropshire.
8. Under the Local Government Act 1972, a local authority can delegate its functions to another local authority. Either Powys County Council or Shropshire Council could choose to delegate the decision and any consequent Order-making with respect to this case to the other authority.
9. Normally, it would be the role of the Planning Taxi Licensing and Rights of Way Committee to determine Definitive Map Modification Order cases in Powys. In Shropshire, that responsibility is delegated to the Head of Infrastructure and Communities; cases are not presented to a Committee.
10. Irrespective of whether the case is considered by a Committee or determined by officers, the decision must be evidence-based. Matters such as desirability, maintenance or impact on land management cannot be taken into account.
11. The Planning Taxi Licensing and Rights of Way Committee is not being asked to consider the evidence in relation to this case at the current time. Rather, the Committee is asked to consider how a decision should be made about it; specifically, the Committee is asked for its view as to whether delegation of responsibility to, or from Shropshire Council would be appropriate. The Committee is then asked to make a recommendation to full Council as to its view on the matter.
12. This report and proposed delegation of decision-making relates to this particular case only; it does not relate to other current or future Definitive Map Modification Order cases.

Options:

13. Two separate decisions could be made about this case, relating to the sections of the route within Powys and Shropshire respectively. That could lead to two separate legal processes being followed to reach an outcome for each of the two sections of the claimed route. These outcomes may potentially be reached at different points in time.
14. Alternatively, a single decision could be made on behalf of both authorities. That would allow for a single legal process to be followed to reach an outcome for both sections of the claimed route.
15. As this is a cross-border route, the options are:
 - a. To formally delegate responsibility to Shropshire Council, to allow them to make a decision in respect of the whole claimed route; or

- b. For Powys County Council to seek a delegation to make a single decision about the whole of the claimed route; or
 - c. For two separate decisions to be made, by each of Shropshire Council and Powys County Council. These would relate to the sections of the claimed route in Shropshire and Powys respectively and may happen at the same point in time, or at different times.
16. Powys County Council's resources to deal with this type of casework are very limited and there are already a number of other cases in progress. If it were decided that Powys County Council should make a decision about this case, then that would take staff time away from other casework that has been allocated higher priority. Alternatively, if the case were placed in the Council's priority list, the decision for the case could be delayed for some years.
17. Shropshire Council must take action to conclude this case in so far as it affects land in Shropshire, even if no decision is made about the section of the route in Powys at the current time. Shropshire Council is in receipt of a formal application for a Definitive Map Modification Order, which must be determined within the timescales set by the Wildlife and Countryside Act 1981. Exceeding the timescale can result in a direction to make a decision, from the Planning Inspectorate.
18. As Shropshire Council is required to commit resources to investigating the claimed route within Shropshire, they have not made any charge for including the section in Powys. Neither have they indicated that they would make any charge if formal decision-making were delegated to them for the whole route. They are willing to accept responsibility for making a decision in respect of this case; an email confirming that is at appendix B.
19. Given the above, it is proposed that Shropshire Council be asked to make a decision about the whole of the claimed route. That would allow for a conclusion to be reached for both sections at the same time, without impacting on other casework that is already in progress in Powys.
20. Delegation of the responsibility for decision-making in respect of the section of this claimed route in Powys requires the approval of the full Council. The Committee is asked to make a recommendation to the full Council as to whether it supports the proposed delegation.

RECOMMENDATION:

That the Committee makes a recommendation to full Council as to whether it supports the proposed delegation of decision making to Shropshire Council, in respect of the section of the claimed route in Powys.

Appendices:

Appendix A	Plan of the claimed route, in both Powys and Shropshire
Appendix B	Email dated 18 th December 2017 from Shropshire Council's Rights of Way Mapping and Enforcement Officer