

CYNGOR SIR POWYS COUNTY COUNCIL.

**FULL COUNCIL
Date 25th January 2018**

REPORT AUTHOR: County Councillor Jonathan Wilkinson
Portfolio Holder for Housing and Countryside Services

SUBJECT: Proposed delegation of decision-making for Definitive Map Modification Order case – Route from Bankshead, Shropshire to Shepherdswhim, Powys

REPORT FOR: Decision

1. Summary

An application was made to Shropshire Council on 4th May 2014 pursuant to section 53 of the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order, to add a bridleway to the Definitive Map and Statement (“the Application”). The application route crosses the county boundary between Shropshire and Powys.

- 1.1 The claimed route is shown on the plan at appendix A marked by a dashed red line on Appendix B which crosses the county boundary between Shropshire and Powys which depicted by a solid green line on Appendix B . The claimed route 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.)
- 1.3 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.
- 1.4 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. The decision is evidence-based; matters such as desirability, maintenance or impact on land management cannot be taken into account.
- 1.5 The purpose of this report is, pursuant to section 101(1)(b) of the Local Government Act 1972, to seek the Council’s authority to delegate to Shropshire County Council the determination of the Application in so far as it related to the County of Powys together with the making of any consequent legal Orders.

- 1.6 Alternatively, a single decision could be made in relation to the whole route by one authority, on behalf of both Councils.
- 1.7 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.

2. Proposal

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 Under section 101 of 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 their decision making function in respect of the Application and any consequent Order-making to the other authority.
- 2.5 For the reasons set out in this report, it is proposed that responsibility for determining the Application be delegated Shropshire County Council, so that can make a single Definitive Map Modification Order on behalf of both local authorities.

3. Options Considered / Available

- 3.1 The options in respect of this case are that either:
 - Two separate decisions could be made, 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 route;

Or:

- 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 route.
- 3.2 If a single decision is made in respect of this case, then that decision could be made by either of Powys County Council or Shropshire Council, with the appropriate delegation from the other authority
 - 3.3 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.
 - 3.4 Shropshire Council must take action to conclude the case as 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.
 - 3.5 As Shropshire Council is required to commit resources to investigating the section of the 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. The cost of determining this type of casework is not dependent on the length of the route involved; it is associated with the case as a whole. Shropshire Council have confirmed that they would be prepared to determine the Application on behalf of Powys, should they be requested to do so.
 - 3.6 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.

4. Preferred Choice and Reasons

- 4.1 To meet existing statutory duties, further time and other resources will need to be devoted to this case by one or both Councils. It seems more efficient for one Council to devote the resources needed to processing this case to a single outcome than for two Councils to do that separately.
- 4.2 As noted above, officer time and other resources have already been committed to this case by Shropshire Council. Shropshire Council's Rights of Way Mapping and Enforcement Manager has confirmed that

they would be willing to take on responsibility for decision-making and any consequent legal Order in respect of this case. An email confirming this can be found at Appendix B.

- 4.3 Under Shropshire Council's current arrangements, Definitive Map Modification Order applications are not presented to a Committee. Determination is formally delegated to the Head of Infrastructure and Communities.
- 4.4 In Powys, Definitive Map Modification Order cases are determined by the Planning, Taxi Licensing and Rights of Way Committee. The Committee decides whether a legal Order should be made or not.
- 4.4 The Planning, Taxi Licensing and Rights of Way Committee have been consulted about the decision-making procedure for this case. Their comment is that they support the proposed delegation to Shropshire Council.
- 4.5 The preferred choice is that Powys County Council delegates responsibility to Shropshire Council, to make a decision in respect of the section of this route within Powys, as well as the section in Shropshire.
- 4.6 If the delegation is approved, Shropshire Council would then be responsible for processing the case to completion. That may include sealing and advertising a legal Order, referring the case to the Planning Inspectorate and representing it through written representations, informal hearing or public inquiry if necessary.

5. Impact Assessment

- 5.1 Is an impact assessment required? No

6. Corporate Improvement Plan

- 6.1 Processing this case to a conclusion contributes to the Corporate Improvement Plan objective 'Meet statutory provision of rights of way and countryside access.'
- 6.2 The risks associated with determining this case are not affected by the proposed delegation. Both authorities routinely determine this type of casework and both would be subject to the same challenge procedures, which are via the Planning Inspectorate. Costs are rarely awarded in relation to these cases, only being awarded when a party is felt to have behaved in a 'manifestly unreasonable' way that affects a public inquiry.

7. Other Front Line Services

Does the recommendation impact on other services run by the Council or on behalf of the Council? No

If so please provide their comments

8. Communications

Have Communications seen a copy of this report? Yes

Have they made a comment? Communications comment is that no proactive communication action is required.

9. Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)

9.1 Legal - The Professional Lead, Legal Services comments that on reading the report, he is pleased that cross-border interests prevail. It makes sense that one authority should deal with the issue on behalf of both authorities. As Shropshire are well-advanced in dealing with this and have agreed to take it up free of charge, it makes little sense to resist the recommendation.

9.2 Finance - From a financial point of view, Shropshire Council has not made any charge for the work that they have carried out to date; nor have they indicated that they would make any charge if formal decision making were delegated to them for the whole route. Therefore, we are happy with the recommendation made.

10. Scrutiny

Has this report been scrutinised? No

If Yes what version or date of report has been scrutinised?
Please insert the comments.

What changes have been made since the date of Scrutiny and explain why Scrutiny recommendations have been accepted or rejected?

11. Statutory Officers

11.1 The Solicitor to the Council (Monitoring Officer) has commented as follows: "I note the legal comment and have nothing to add to the report".

The Head of Financial Services (Acting Section 151 Officer) notes the comments made by the Finance.

12. Members' Interests

The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

Recommendation:	Reason for Recommendation:
Pursuant to section 101(1)(b) of the Local Government Act 1972 the determination of the Application in so far as it related to the County of Powys together with the making of any consequent legal Orders is delegated to Shropshire County Council.	In the interests of efficiency and need for the application to be determined as soon as is reasonably practicable

Relevant Policy (ies):	
Within Policy:	Within Budget: Y

Relevant Local Member(s):	Councillor Michael J Jones
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Person(s) To Implement Decision:	Shropshire Council's Outdoor Partnerships team
Date By When Decision To Be Implemented:	With immediate effect

Contact Officer:	Siân Barnes
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Background Papers used to prepare Report:

Appendix A Application for Modification Order dated 4th May 2014
Appendix B Plan of the claimed route, in both Powys and Shropshire
Appendix C Email dated 18th December 2017 from Shropshire Council's Rights of Way Mapping and Enforcement Officer