



<u>Committee and Date</u>
Council
13 January 2022

<u>Item</u>
Public

**LOCAL GOVERNMENT ACT 1972, SECTION 101
PROPOSED PUBLIC PATH EXTINGUISHMENT ORDER TO DELETE
FOOTPATH 19 (PART) IN THE PARISH OF ST MARTIN'S
DELEGATION TO WREXHAM COUNTY BOROUGH COUNCIL TO MAKE THE
ORDER ON BEHALF OF SHROPSHIRE COUNCIL**

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1. Synopsis

A cross border footpath between Shropshire and Wrexham requires extinguishment as it is no longer needed. A new more suitable footpath and crossing point of the Morlas Brook have been created. As the majority of the route falls within Wrexham the most expedient way to extinguish these routes is for one authority to do so. Authority is therefore sought for Wrexham Borough Council to extinguish the section within Shropshire.

2. Executive Summary

Part of a public footpath which runs within both Shropshire Council and Wrexham Borough County Council area is proposed to be extinguished by order. Wrexham Borough County Council has agreed to process the order, as the majority of the footpath falls within its area. Authority is sought to delegate the power to make a legal order to Wrexham Borough County Council under the Local Government Act 1972, Section 101.

3. Recommendation

It is recommended that Shropshire Council delegates the authority to Wrexham Borough County Council to publish the legal order extinguishing St Martin's Footpath 19 (part) at the same time as Chirk Footpath 35 in Wrexham.

REPORT

4. Risk Assessment and Opportunities Appraisal

The main risk to Shropshire Council would be if the extinguishment Order was unsuccessful as this would leave an anomalous footpath spur with no safe crossing of the brook. This is considered to be extremely unlikely as full consultations were undertaken as part of the proposals and all parties are in full agreement. The proposed extinguishment fulfils all of the necessary legal tests.

Human Rights Act 1998

The investigating authority will consider the extinguishment of the above-named route in the context of the Human Rights Act 1998 generally, and the provisions of Article 1 (protection of property) of the First Protocol, and Article 8 (respect for private and family life) of the European Convention in particular.

The investigating authority will be under the same obligation as this Council is in considering that the making of the extinguishment order, under section 118 of the Highways Act 1980, is consistent with the concept of proportionality and is not therefore contrary to the Human Rights Act.

5. Financial Implications

The Council has a statutory duty to keep the Definitive Map under review and undertake the making of legal orders when required. Reasonable costs will be met by Wrexham Borough County Council. Shropshire may be asked to contribute to advertising costs when the order is published and provide officer support should any resulting order require a public inquiry.

6. Climate Change Appraisal

It is recognised that the use of the public rights of way network supports local active travel reducing the effect of motorised vehicles within local areas. This proposal has removed a concrete ford which hindered fish being able to breed further upstream and was funded by Natural Resources Wales. An alternative route has been provided via a steel bridge further upstream which will not hinder fish migration and improves the footpath network in this vicinity. There is no effect on renewable energy and the amendment to the network provides a direct benefit to the local ecosystem. The new route will be more resilient to erosion in extreme weather events due to climate change.

7. Background

Following the completion of a project by Natural Resource Wales to remove a concrete ford across the Morlas Brook (which forms the county boundary between Shropshire and Wrexham Borough County Council) and replace with a footbridge further upstream, the landowners, Brynkinalt Estate, dedicated a

public footpath to run across the new footbridge and connect St Martin's Footpath 19 in Shropshire with Chirk Footpath 35 in Wrexham.

Consequently, a short length of St Martin's Footpath 19, which leads from the newly created footpath to the county boundary in the middle of the Morlas Brook, and a longer length of Chirk Footpath 35 on the other side, is proposed to be subject to an Extinguishment Order, under Section 118 of the Highways Act 1980. It is no longer needed for public use and is unsafe to cross, now that the ford has been removed. As most of the footpath to be extinguished falls within Wrexham, Wrexham Borough County Council has agreed to process the extinguishment.

Therefore, officers are recommending that the Council delegates the power to process and make the legal order to Wrexham Borough County Council. This is considered to be the most practicable and efficient way of dealing with the extinguishment.

Under Article 11 of Shropshire Council's Constitution, *The Council or Cabinet, in order to promote the economic, social or environmental well-being of its area, may:*

- (a) enter into arrangements or agreements with any person or body;*
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and*
- (c) exercise on behalf of that person or body any functions of that person or body.*

The power to delegate non-Cabinet functions (which these are) is reserved to Council under Article 11.4 of the Council's Constitution.

This report is to delegate to Wrexham Borough County Council all matters relating to the extinguishment of St Martin's Footpath 19 (part) in the interests of expediency, so that the order, under Section 118 of the Highways Act 1980, can be progressed. It is considered that progressing the order will promote the economic, social and environmental well-being of the area.

8. Conclusion

The most expedient way to progress the extinguishment order, which affects two adjacent authorities, is for one, i.e. Wrexham County Borough Council, to undertake the full procedure.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

[Shropshire Council Highways Act 1980 Public Path Creation Agreement \(Parish of St Martins\) 2021](#)

Correspondence between investigating officer and Wrexham Borough Council

Cabinet Member (Portfolio Holder)

CLlr Cecilia Motley

Local Member

Cllr Steve Davenport

Appendices

Appendix 1 – Plan showing footpath proposed to be extinguished

Appendix 2 – Location Plan