

**APPLICATION FOR A PUBLIC PATH DIVERSION  
ORDER AFFECTING PUBLIC FOOTPATH CL3/39 IN  
CHEW MAGNA**

**1. The Issue**

- 1.1 An application has been made to divert a section of Public Footpath CL3/39 in Chew Magna to move the public footpath away from the applicant's home and garden.

**2. Recommendation**

- 2.1 That the Team Manager - Highways Maintenance and Drainage grants authorisation for a Public Path Diversion Order to be made to divert a section of Public Footpath CL3/39 as detailed on the plan attached at Appendix 1 ("the Decision Plan") and in the schedule attached at Appendix 2 ("the Decision Schedule").

**3. Financial Implications**

- 3.1 The Applicant has agreed to pay the cost for processing an Order, the cost of any required notices in a local newspaper and for the works required to raise the new route to an acceptable standard for use by the public. Should an Order be made and confirmed, the Proposed Footpath will become maintainable at public expense.
- 3.2 Should an Order be made and objections received and sustained, then the Order will either be referred back to the Team Manager - Highways Maintenance and Drainage or to the Planning Committee to consider the matter in light of those objections. Should the Team Manager - Highways Maintenance and Drainage or Committee decide to continue to support the Order, then the Order will be referred to the Secretary of State for the Environment, Food and Rural Affairs for determination. Bath and North East Somerset Council ("the Authority") would be responsible for meeting the costs incurred in this process, for instance at a Public Inquiry.

**4. Human Rights**

- 4.1 The Human Rights Act incorporates the rights and freedoms set out in the European Convention on Human Rights into UK law. So far as it is possible all legislation must be interpreted so as to be compatible with the convention.
- 4.2 The Authority is required to consider the application in accordance with the principle of proportionality. The Authority will need to consider the protection of individual rights and the interests of the community at large.
- 4.3 In particular the convention rights which should be taken into account in relation to this application are Article 1 of the First Protocol (Protection of Property), Article 6 (the right to a fair hearing) and Article 8 (Right to Respect for Family and Private Life).

## **5. The Legal and Policy Background**

- 5.1 The Authority has a discretionary power to make Public Path Orders. When considering an application for a Public Path Order, the Authority should first consider whether the proposals meet the requirements set out in the legislation (which are reproduced below). In deciding whether to make an Order or not, it is reasonable to consider both the tests for making the Order and for confirming the Order (*R. (Hargrave) v. Stroud District Council [2002]*). Even if all the tests are met, the Authority may exercise its discretion not to make the Order but it must have reasonable ground for doing so (*R. (Hockerill College) v. Hertfordshire County Council [2008]*).
- 5.2 Before making an Order under section 119 of the Highways Act 1980 ("the Act"), it must appear to the Authority that it is expedient to divert the path in the interests of the public and/or of the owner, lessee or occupier of the land crossed by the path.
- 5.3 The Authority must also be satisfied that the Order does not alter any point of termination of the path, other than to another point on the same path, or another highway connected with it, and which is substantially as convenient to the public.
- 5.4 Before confirming an Order, the Authority or the Secretary of State must be satisfied that:
- the diversion is expedient in the interests of the person(s) stated in the Order,
  - the path will not be substantially less convenient to the public as a consequence of the diversion,
  - it is expedient to confirm the Order having regard to the effect it will have on public enjoyment of the path as a whole, on other land served by the existing path and on land affected by any proposed new path, taking into account the provision for compensation.
- 5.5 The Authority must also give due regard to the effect the diversion will have on farming and forestry, biodiversity and members of the public with disabilities.
- 5.6 In addition to the legislative tests detailed above, the proposals must also be considered in relation to the Authority's adopted Public Path Order Policy. The Policy sets out the criteria against which the Authority will assess any Public Path Order application and stresses that the Authority will seek to take a balanced view of the proposals against all the criteria as a whole.
- 5.7 The criteria are:
- Connectivity,
  - Equalities Impact,
  - Gaps and Gates,
  - Gradients,
  - Maintenance.
  - Safety,
  - Status,
  - Width,
  - Features of Interest,

## **6. Background and Application**

- 6.1 Public footpath CL3/39 is recorded on the Definitive Map and Statement which has a relevant date of 26 November 1956.
- 6.2 The Existing Footpath clips the edge of a summer house in the applicant occupiers' garden before passing through the middle of their home. They wish to divert the footpath away from the summer house and their home so that it runs along the edge of their garden before descending a concrete-surfaced slope to join Double House Lane approximately 45 metres away from the point where the Existing Footpath meets that road.
- 6.3 **Description of the Existing Footpath**  
The proposal is to divert the full width of the section of Public Footpath CL3/39 commencing from grid reference ST 5860 6078 (point A on the Decision Plan) and proceeding in a generally south-westerly direction for approximately 164 metres to grid reference ST 5848 6068 (point B on the Decision Plan) would be stopped up. This route is referred to as the "Existing Footpath".
- 6.4 **Description of the Proposed Footpath**  
The proposed new route commences from grid reference ST 5860 6078 (point A on the Decision Plan) and proceeds in a generally south-westerly direction for approximately 119 metres to grid reference ST 5852 6070 (point C on the Decision Plan). The width would be two metres throughout. This route is referred to as the "Proposed Footpath".
- 6.5 **Limitations and Conditions**  
No limitations or conditions are proposed.

## **7. Consultations**

- 7.1 The affected landowner, Chew Magna Parish Council, national and local user groups, the Ward Councillors and statutory consultees were all consulted about the proposed diversion for a period of four weeks ("the Consultation Period"). Additionally site notices were erected at both ends of the proposed diversion and on the Authority's website to seek the views of members of the public.
- 7.2 In response to the consultation, a number of statutory undertakers stated that their plant would not be affected and/or that they had no objections to the proposals.
- 7.3 Similarly, one of the Ward Councillors stated that they had no objections to the proposals.
- 7.4 No other comments were received in relation to the proposals during the Consultation Period.

## **8. Officer Comments**

- 8.1 It is recommended that the various tests outlined in section 5 above are considered in turn.
- 8.2 **The first test is whether it is expedient to divert the path in the interests of the public and/or of the owner, lessee or occupier of the land crossed by the path:** Reinstatement of the Existing Footpath would involve the demolition of the applicant occupiers' home. The Proposed Footpath will divert walkers away from their home to follow an alternative line along the edge of their garden. Consequently, it would be expedient to divert the path in the interests of the occupiers and this test should therefore be considered to have been met.
- 8.3 **The Authority must be satisfied that the diversion does not alter any point of termination of the path, other than to another point on the same path, or another highway connected with it, and which is substantially as convenient to the public:** The Proposed Footpath starts at the same point as the Existing Footpath and finishes at a point on Double House Lane approximately 45 metres away from the point where the Existing Footpath meets that road. This is only a very short distance away from the continuation of the public rights of way network along public footpath CL3/79 and although the diversion would result in the public having to walk a further 45 metres along Double House Lane in order to access this other footpath, as it is a very quiet road with infrequent traffic this is not considered an inconvenience to the public. This test is therefore considered to have been met.
- 8.4 **The path must not be substantially less convenient to the public as a consequence of the diversion:** Matters such as length, difficulty of walking and the purpose of the path pertain to the convenience to the public. The overall length of the diverted route will be 45 metres shorter than the length of the existing route which is considered an insignificant decrease given the predominant leisure use of the footpath. There is no change in the difficulty of walking. It therefore follows that the Proposed Footpath is not substantially less convenient to the public and this test should therefore be considered to have been met.
- 8.5 **Consideration must be given to the effect the diversion will have on public enjoyment of the path as a whole, on other land served by the existing path and on land affected by any proposed new path, taking into account the provision for compensation:**
- 8.6 **Public enjoyment of the Path as a whole:** The Proposed Footpath runs over improved terrain and is also the route which people would naturally walk. There is no difference between the Proposed and Existing Footpaths in terms of the views enjoyed; the start point is not altered and the finish point is only altered marginally. The effect on public enjoyment is therefore improved or neutral.
- 8.7 **Effect on other land served by the existing footpath and land affected by the proposed footpath:** The occupiers' land will benefit from the removal of the Existing Footpath as the public right of way will no longer

pass through their house. Similarly, as the Proposed Footpath will skirt the edge of the occupiers' garden and avoid buildings, it will not have an adverse effect on that land.

- 8.8 **Effect on land affected by any proposed new path, taking into account the provision for compensation:** There is no adverse effect on land affected by the Proposed Footpath, taking into account the provision for compensation, as all of the land crossed by it is owned/occupied by the applicant.
- 8.9 **The Authority must give due regard to the effect the diversion will have on farming and forestry, biodiversity and members of the public with disabilities:** There will be a neutral effect on farming as the first 90 metres of the Proposed Footpath from point A will cross the same llama field as the Existing Footpath. There will be no effect on forestry as neither the Existing nor Proposed Footpaths cross any woodland. Neither will there be any adverse effect on biodiversity or members of the public with disabilities.
- 8.10 **The effect of the diversion on the additional criteria identified in the Authority's Public Path Order Policy; namely, Connectivity, Equalities Impact, Gaps and Gates, Gradients, Maintenance, Safety, Status, Width and Features of Interest:**
- 8.11 The Proposed Footpath starts at the same point as the Existing Footpath and finishes at a point approximately 45 metres away from the point where the Existing Footpath currently meets Double House Lane, opposite the start of public footpath CL3/79. With this creating only a very short distance to walk to this other footpath, along a quiet road with infrequent traffic, the effect on connectivity is considered negligible.
- 8.12 The proposed diversion will have a neutral effect on people with disabilities.
- 8.13 The Proposed Footpath will cross the same fence line between the applicant's agricultural field and garden, as the Existing Footpath. A pedestrian gate will be installed next to the existing vehicular gate at grid reference ST 5854 6072 (point D on the Decision Plan). This will be authorised under Section 147 of the Act to prevent the ingress and egress of the llamas that the applicant keeps in the field on the eastern side of this boundary.
- 8.14 Compared with the Existing Footpath, there is a slightly steeper gradient to descend on the concrete-surfaced slope at point C of the Proposed Footpath. However as this only comprises a nine-metre stretch on a firm and hardwearing surface, this increase is considered negligible.
- 8.15 It is not considered that the Proposed Footpath will require any more maintenance than the Existing Footpath.
- 8.16 The Proposed Footpath will have a neutral impact on Safety.
- 8.17 The Proposed Footpath will have a neutral impact on Status.

- 8.18 The Existing Footpath is considered 1.8 metres wide. The Proposed Footpath will be two metres wide.
- 8.19 The Proposed Footpath will not remove public access from any feature of interest or place of resort, nor will it diminish the quality or diversity of any views.
- 8.20 It is considered that on balance the proposed diversion is in accordance with the Policy.

## **9. Risk Management**

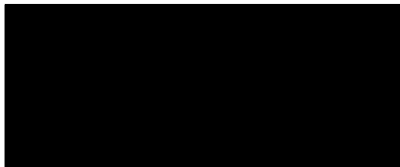
- 9.1 There are no significant risks associated with diverting the footpath.

## **10. Conclusion**

- 10.1 It is considered that the relevant statutory tests for making a Diversion Order under Section 119 of the Act have been met and that the proposal is in line with the Public Path Order Policy.
- 10.2 The Diversion Order would be in the interests of the occupiers of the land.
- 10.3 The Order should be made as proposed.
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## **AUTHORISATION**

Under the authorisation granted by the Council on 21<sup>st</sup> July 2022, the Team Leader: Place Legal Services is hereby requested to seal an Order to divert a section of Public Footpath CL3/39 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.

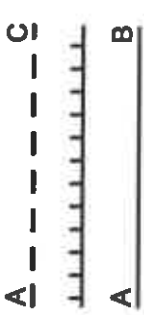


Dated: 24/11/2022

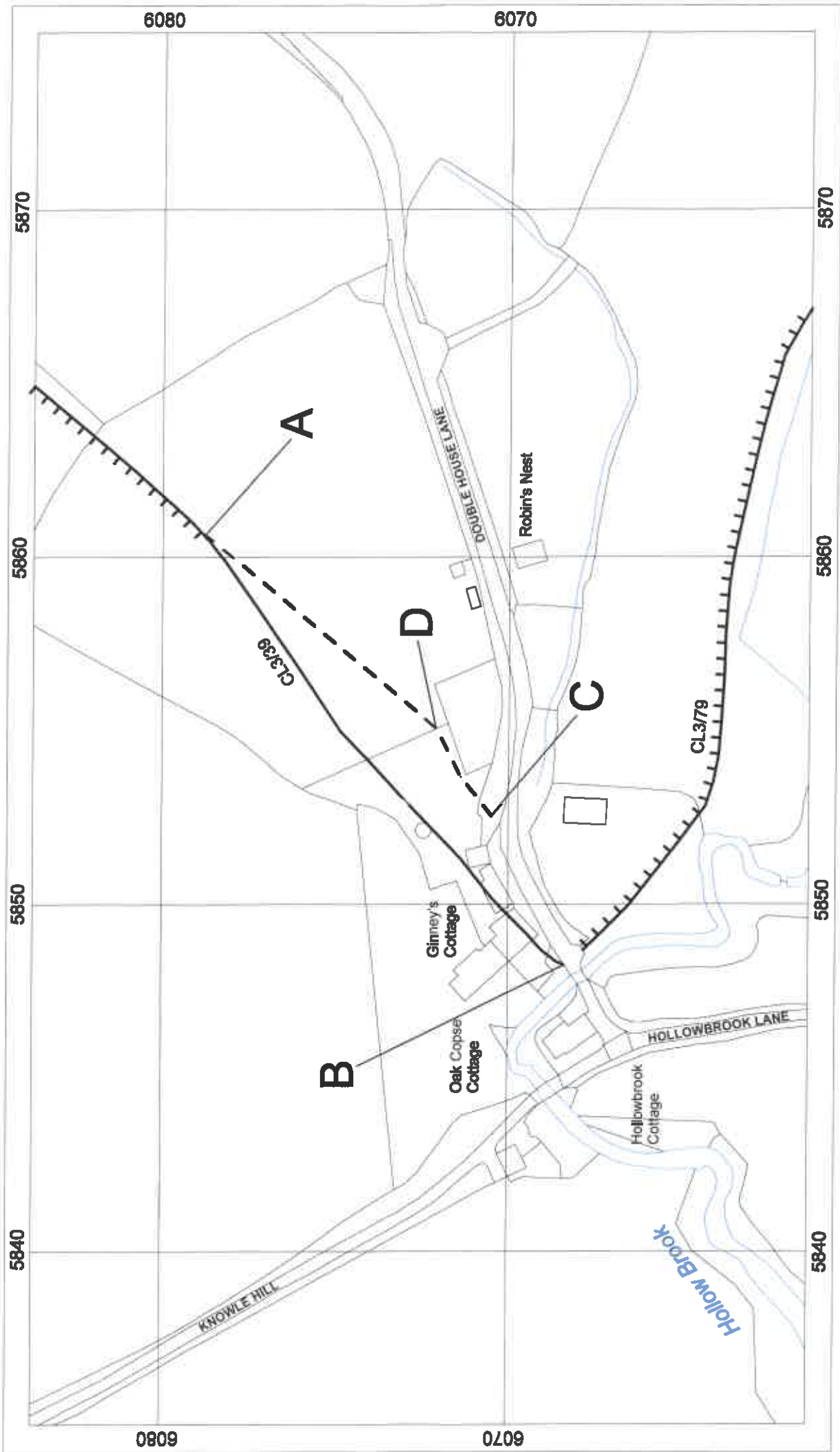
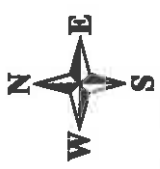
Craig Jackson – Team Manager, Highways Maintenance and Drainage

**Appendix 1 - Decision Plan  
Public Footpath CL3/39,  
Hollowbrook, Chew Magna**

Public footpath to be added  
Unaffected public footpath  
Public footpath to be stopped up



Scale 1:1500



## **APPENDIX 2 - DECISION SCHEDULE**

### **PART 1**

#### **DESCRIPTION OF SITE OF EXISTING PATH OR WAY**

The full width of the section of Public Footpath CL3/39 commencing from grid reference ST 5860 6078 (point A on the Decision Plan) and proceeding in a generally south-westerly direction for approximately 164 metres to grid reference ST 5848 6068 (point B on the Decision Plan).

### **PART 2**

#### **DESCRIPTION OF SITE OF NEW PATH OR WAY**

A public footpath commencing from grid reference ST 5860 6078 (point A on the Decision Plan) and proceeding in a generally south-westerly direction for approximately 119 metres to grid reference ST 5852 6070 (point C on the Decision Plan).

Width: 2 metres between grid references ST 5860 6078 (point A on the Decision Plan) and ST 5852 6070 (point C on the Decision Plan).

### **PART 3**

#### **LIMITATIONS AND CONDITIONS**

None.