

SECTION 116 of the HIGHWAYS ACT 1980

REQUEST FOR THE AUTHORITY TO MAKE AN APPLICATION TO STOP UP PUBLIC HIGHWAY RIGHTS OVER SECTIONS OF PIXASH LANE AND STIDHAM FARM LANE

(Ward Division: Keynsham East)

1. The Issue

- 1.1 The proposal is for Bath and North East Somerset Council ("the Authority") to make an application to the Magistrates' Court to stop up public highway rights in the vicinity of Avon Valley Farm in Keynsham.

2. Recommendation

- 2.1 That the Team Manager - Highways Maintenance & Drainage grants authorisation for the Authority to apply to the Magistrates' Court under section 116 of the Highways Act 1980 ("the 1980 Act") to stop up public highway rights over sections of Pixash Lane and Stidham Farm Lane 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 first £2,000 of the Authority costs incurred in processing the request. It is estimated that the total cost will be approximately £2,500 and the remainder of these costs will be met from the existing Public Rights of Way budget. It was agreed that the cost to the Applicant would be capped due to the failure of the Authority to process the request in a timely manner before it was passed to the Public Rights of Way Team.

4. Human Rights

- 4.1 The Human Rights Act 1998 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 principles 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 6 (the right to a fair hearing), Article 8 (Right to Respect for Family and Private Life) and Article 1 of the First Protocol (Protection of Property).

5. Legal Background

- 5.1 The Authority has a discretionary power to apply to the Magistrates' Court to have public highway stopped up under section 116(1)(a) of the Act on the grounds that it is '*unnecessary*.' Section 116(3) of the Act states that an application cannot be made if the Parish Council has refused to consent to the making of the application. Furthermore, section 116(4) of the Act allows for the reservation of public footpath right.
- 5.2 The Authority must also give due regard to the effect the stopping up would have on biodiversity and members of the public with protected characteristics as defined by the Equality Act 2010.

6. Background and Application

- 6.1 Pixash Lane and Stidham Farm Lane were shown on the Handover Map when Somerset County Council became the Highway Authority in 1930. However, these routes were not subsequently recorded on the List of Streets maintainable at public expense which the highway authority is required to keep under section 36 of the 1980 Act and the predecessor Acts. Consequently, it was not widely known that they were full vehicular highways until the matter arose during the consideration of a planning application to redevelop Avon Valley Adventure and Wildlife Park ("AVAWP") in 2010. Mr John Douglas, who owns AVAWP, requested the Authority to apply to stop up the public highway rights as detailed in paragraphs 6.2 and 6.4 below on the grounds that they are '*unnecessary*' for public use and to regularise what had commonly been believed to already be the legal situation.
- 6.2 **Description of the Highway to be Stopped up.** It is proposed that the full width of that section of the highway known as Pixash Lane which is shown cross-hatched in black on the Decision Plan at Appendix 1 ("the Plan") and commences from a junction with Stidham Lane at grid reference ST 6712 6846 (Point A on the Plan) and continues in a generally northerly direction through AVAWP for approximately 240 metres to grid reference ST 6714 6870 (Point B on the Plan) is stopped up. This route is hereafter referred to as "Pixash Lane North".
- 6.3 Also it is proposed that approximately 52m² of the highway known as Stidham Farm Lane which is shown cross-hatched in black on the Plan and centred on grid reference ST 6728 6838 (Point C on the Plan) should be stopped up. This section of highway is hereafter referred to as "the Stidham Farm Lane Triangle."
- 6.4 **Description of the Highway to be Stopped Up subject to the reservation of public footpath rights.** It is proposed that the full width of that section of the highway known as Stidham Farm Lane

which is shown stippled in black on the Plan and commences from a junction with Pixash Lane at grid reference ST 6712 6845 (Point D on the Plan) and continues in a generally east-south-easterly direction for approximately 465 metres to a junction with public footpath BA27/41 at grid reference ST 6754 6835 (Point E on the Plan) should be stopped up subject to the reservation of public footpath rights. This route is hereafter referred to as "Stidham Farm Lane". The majority of Stidham Farm Lane is also recorded on the Definitive Map and Statement as public footpath BA27/41 and public footpath BA27/41 continues to the east of Point E on the Plan.

7. Consultations

- 7.1 The affected landowners and lessees, local residents, Keynsham Town Council, the Ward Councillor and national and local stakeholders including the police and road transport associations were all consulted about the proposed stopping up. Additionally site notices were erected at points A, C and E on the Plan and on the Authority's website to seek the views of members of the public.
- 7.2 Keynsham Town Council have confirmed that they do not have any objection to the proposals.
- 7.3 Representations were received from two sets of local residents who access their properties via Stidham Farm Lane. Matters relating to these residents and their representations are considered in paragraph 8.5 below.
- 7.4 Queries were received from Avon and Somerset Constabulary and local walkers but neither expressed any objection to the proposals. No other comments were received in relation to this proposal and copies of the consultation and responses are available upon request.

8. Officer Comments

- 8.1 **The legislative test under consideration is whether the routes are unnecessary for public use.**
- 8.2 Pixash Lane North is a cul-de-sac which terminates at point B on the Plan and point B on the Plan is not a point of public resort. Pixash Lane North serves a freehold property owned by Mr Douglas and a leasehold property owned by AVAWP, which itself is owned by Mr Douglas. The only other property served by Pixash Lane North is a leasehold concession stand owned by Ms Danter; however, this concession stand is one of a number of structures which were built on the northern half of Pixash Lane North at a time when the public highway rights were not known about because the route was omitted from the List of Streets. These structures therefore obstruct Pixash Lane North and Ms Danter has not objected to the proposals.

- 8.3 Members of the public will continue to be able to access AVAWP by virtue of the implied licence which they already need to access AVAWP.
- 8.4 The Stidham Farm Lane Triangle previously adjoined the remainder of Stidham Farm Lane; however, minor changes to field boundaries now means that it is part of a large pasture field and is fenced off from the remainder of Stidham Farm Lane. Stidham Farm Lane is a wide route and the Stidham Farm Lane Triangle does not therefore serve any purpose.
- 8.5 Stidham Farm Lane provides the sole means of access to The Old Granary and Stidham House which lie to the east of point E on the Plan. As stated in paragraph 6.1 above, the existence of motorised vehicular rights was known about by local residents until recently. Therefore when the owners of The Old Granary and Stidham House ("the Residents") bought their properties they ensured that the properties had private easements over Stidham Farm Lane to ensure they had a right of access. These private easements will continue to subsist if the public highway rights are stopped up; however, the Residents' solicitor was not able to confirm for them that the easement also benefits third parties, such the Authority's waste and recycling vehicles, who provide services to the Residents.
- 8.6 Mr Douglas, who owns all the land over which Stidham Farm Lane runs, has confirmed that he is happy to grant an easement to ensure that third parties providing services to the Residents can continue to access their properties.
- 8.7 The majority of Stidham Farm Lane is recorded on the Definitive Map and Statement as public footpath BA27/41; it is likely that Somerset County Council were not aware of the existence of these higher rights when the route was recorded as a public footpath and it should be noted that the Definitive Map and Statement is without prejudice to higher unrecorded rights. Public footpath BA27/41 continues to the east of point E on the Plan and it is therefore necessary under section 116(4) of the Act for public footpath rights to be reserved over Stidham Farm Lane.
- 8.8 Subject to the reservation of public footpath rights and the prior granting of an easement as detailed in paragraphs 8.5 and 8.6 above, Stidham Farm Lane appears to be unnecessary for public use. Statutory undertakers' rights should be left unaffected.
- 8.9 The Authority must give due regard to the effect the stopping up will have on biodiversity and members of the public with protected characteristics.**
- 8.10 The stopping up would have a neutral effect on biodiversity and members of the public with protected characteristics.

9. Risk Management

- 9.1 There are no significant risks associated with applying to stop up the highways rights detailed in paragraphs 6.2 to 6.4 above.

10. Conclusion

- 10.1 It appears that the relevant statutory test for stopping up the public highways rights will have been met once a private easement has been granted.
- 10.2 The Authority should apply to the Magistrates' Court to stop up the public highway rights as detailed on the Plan attached at Appendix 1 and in the schedule attached at Appendix 2 once a private easement has been granted.

AUTHORISATION

Under the authorisation granted by the Council on 12 May 2016, the Team Manager - Highways Maintenance & Drainage resolves that the Authority should apply to the Magistrates' Court to stop up Pixash Lane North and the Stidham Farm Lane Triangle and to stop up Stidham Farm Lane subject to the reservation of public footpath rights as detailed on the plan attached at Appendix 1 ("the Decision Plan") and in the schedule attached at Appendix 2 ("the Decision Schedule").







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Craig Jackson
Team Manager - Highways Maintenance & Drainage



Dated: 19/5/16

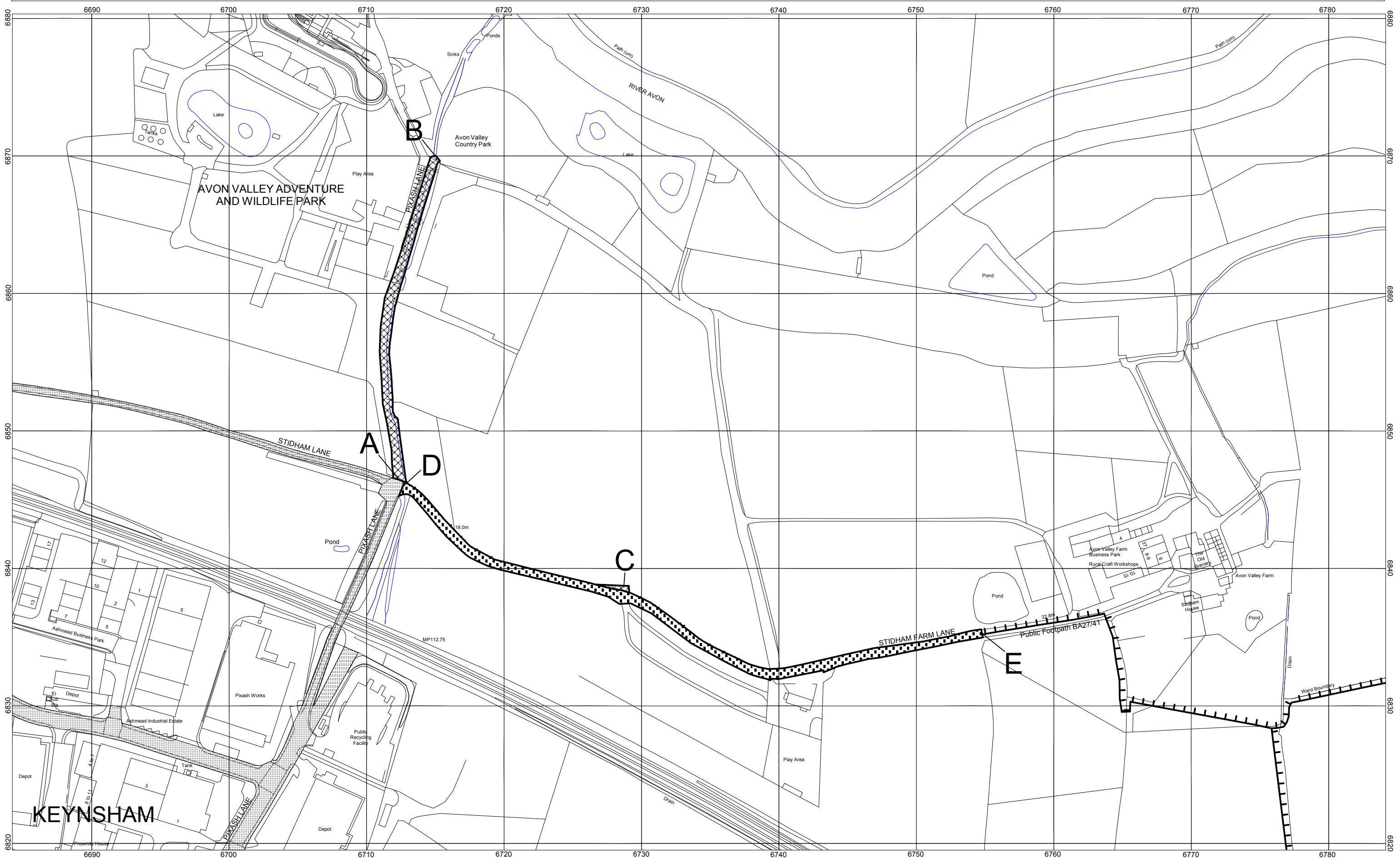
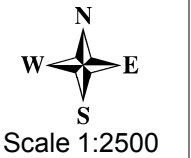
APPENDIX 1: DECISION PLAN

Pixash Lane and Stidham Farm Lane
 Section 116 of the Highways Act 1980
 Proposed stopping up of public highway

Unaffected public footpath 
 Unaffected Public highway 

Public highway to be stopped up 
 Public highway to be stopped up subject to the reservation of public footpath rights 



APPENDIX 2

DECISION SCHEDULE HIGHWAY TO BE STOPPED UP

Part I

The full width of that section of the highway known as Pixash Lane which is shown cross-hatched in black on the Plan and commences from a junction with Stidham Lane at grid reference ST 6712 6846 (Point A on the Plan) and continues in a generally northerly direction through Avon Valley Adventure and Wildlife Park for approximately 240 metres to grid reference ST 6714 6870 (Point B on the Plan).

Part II

Approximately 52m² of the highway known as Stidham Farm Lane which is shown cross-hatched in black on the Plan and centred on grid reference ST 6728 6838 (Point C on the Plan).

HIGHWAY TO BE STOPPED UP SUBJECT TO THE RESERVATION OF PUBLIC FOOTPATH RIGHTS

Part III

The full width of that section of the highway known as Stidham Farm Lane which is shown stippled in black on the Plan and commences from a junction with Pixash Lane at grid reference ST 6712 6845 (Point D on the Plan) and continues in a generally east-south-easterly direction for approximately 465 metres to a junction with public footpath BA27/41 at grid reference ST 6754 6835 (Point E on the Plan).

The Plan may be inspected free of charge at the One Stop Shop, Civic Centre, Market Walk, Keynsham, BS31 1FS during normal office hours.