

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATHS BA17/8,
BA17/9 & BC14/11 IN THE PARISH OF NEWTON ST
LOE / CITY OF BATH**

1. The Issue

- 1.1 An application has been made to divert sections of Public Footpaths BA17/8 & BA17/9 in Newton St Loe (and a very short section of Public Footpath BC14/11 in the City of Bath) onto the routes that have been walked by the public since the land was first landscaped by a previous owner more than 40 years ago.

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 sections of Public Footpaths BA17/8, BA17/9 & BC14/11 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 footpaths BA17/8 & BA17/9 are recorded on the Bathavon Definitive Map and Statement which has a relevant date of 26 November 1956 (“the Relevant Date”). Public footpath BC14/11 was added to the City of Bath Definitive Map and Statement by the Bath and North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No.13 – Twerton) 2017 which took effect on 11 January 2018. The legal alignment of all three footpaths has remained unchanged ever since.

6.2 At some point between the Relevant Date of the Bathavon DMS and 1975, the land upon which the Existing Footpaths are situated was landscaped, changing the naturally contouring slope over which they originally ran to a series of terraced levels. The land has been used as a campsite since at least as long ago as 1975. Since this landscaping took place, it has not been possible to walk the full legal lines of either footpath.

6.3 The applicants are the current landowners who acquired the site in March 2009. They have submitted an application to divert the Existing Footpaths so that they follow the routes that are now walked by the public.

6.4 Description of the Existing Footpaths

The proposal is to divert the following sections of footpath:

6.5 The full width of the section of Public Footpath BA17/8 commencing from grid reference ST 7134 6468 (point A on the Decision Plan) and proceeding in a generally east north-easterly direction for approximately 133 metres, via point B on the Decision Plan, to meet public footpath BC14/11 at grid reference ST 7146 6469 (point C on the Decision Plan); then the full width of the section of Public Footpath BC14/11 commencing from grid reference ST 7146 6469 (point C on the Decision Plan) and proceeding in a generally easterly direction for approximately 8 metres to grid reference ST 7147 6469 (point D on the Decision Plan). This route is referred to as “Footpath 1”.

6.6 The full width of the section of Public Footpath BA17/9 commencing from a junction with Waltining Lane at grid reference ST 7151 6483 (point N on the Decision Plan) and proceeding in a generally easterly direction for approximately 84 metres to point P on the Decision Plan at grid reference ST 7159 6483, then turning in a generally south-westerly direction for approximately 40 metres to grid reference ST 7156 6480 (point Q on the Decision Plan). This route is referred to as “Footpath 2”.

6.7 These routes are referred to collectively as the “Existing Footpaths”.

6.8 **Description of the Proposed Footpaths**

The proposal diverts the Existing Footpaths to the following routes:

6.9 A public footpath commencing from grid reference ST 7134 6468 (point A on the Decision Plan) and proceeding in a generally east south-easterly direction for approximately 44 metres to grid reference ST 7138 6467 (point E on the Decision Plan), and then turning in a generally north north-easterly direction for approximately 61 metres to grid reference ST 7141 6472 (point F on the Decision Plan), and then turning in a generally east south-easterly direction for approximately 16 metres to grid reference ST 7142 6471 (point G on the Decision Plan), and then turning in a generally north-easterly direction for approximately 8 metres to grid reference ST 7143 6471 (point H on the Decision Plan), and then turning in a generally south-easterly direction for approximately 13 metres to grid reference ST 7144 6471 (point J on the Decision Plan), and then turning in a generally east south-easterly direction for approximately 20 metres to a junction with public footpath BA17/9 at grid reference ST 7145 6470 (point K on the Decision Plan), and then continuing in a generally south-easterly direction for approximately 3 metres to grid reference ST 7145 6470 (point L on the Decision Plan) and then turning in a generally east south-easterly direction for approximately 10 metres to the city of Bath/Newton St Loe boundary at grid reference ST 7146 6470 (point M on the Decision Plan), and then continuing in a generally east south-easterly direction for approximately 8 metres to grid reference ST 7147 6469 (point D on the Decision Plan). This route is referred to as “Diversion 1”

6.10 A public footpath commencing from a junction with Waltining Lane at grid reference ST 7151 6483 (point N on the Decision Plan) and proceeding in a generally easterly direction for approximately 34 metres to grid reference ST 7154 6484 (point R on the Decision Plan), then turning in a generally south south-easterly direction for approximately 41 metres to grid reference ST 7155 6480 (point S on the Decision Plan), then turning in a generally easterly direction for approximately 15 metres to grid reference ST 7156 6480 (point Q on the Decision Plan). This route is referred to as “Diversion 2”.

6.11 These routes are referred to collectively as the “Proposed Footpaths” and will be two metres wide throughout.

6.12 **Limitations and Conditions**

No limitations or conditions are proposed.

7. Consultations

- 7.1 The affected landowner, Newton St Loe 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 One member of the public queried the routes of the Existing and Proposed Footpaths and was sent an e-mail explaining the proposals in a little more detail; she did not then respond further. Another member of the public commented that he hoped there would be better signage than there is currently, once any diversion had taken place.
- 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 Footpaths would involve the re-landscaping of significant proportions of the owner applicant’s site, extensive vegetation clearance and the removal of one of the holiday lodges currently situated on it. The Proposed Footpaths will take the public along a route which is already landscaped and cleared of vegetation for the purpose of walking. Consequently, it would be expedient to divert the path in the interests of the landowners 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 termination points of the Proposed Footpaths are not changing so this test is also satisfied.
- 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 Diversion 1 will be 33 metres longer than the length of Footpath 1 and the overall length of Diversion 2 will be 34 metres shorter than the length of Footpath 2. These are considered very modest

changes in length, particularly taking into account the location of the Existing and Proposed Footpaths within the wider rights of way network in the Parish and City of Bath - such that these changes in distance for the walker are likely to represent very insignificant changes in distance to their overall walk. There is no change in the difficulty of walking. It therefore follows that the Proposed Footpaths are 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 Footpaths run over improved terrain having been the routes people have naturally walked for more than 40 years. There is no difference between the Proposed and Existing Footpaths in terms of the views enjoyed and neither the start nor the finish points are altered. 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 proposed diversions will not have an adverse effect either on land served by the Existing Footpaths, or on land affected by the Proposed Footpaths. Consequently, this test should be considered to have been met.
- 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 Footpaths, taking into account the provision for compensation, as all of the land crossed by it is owned 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:** The Proposed Footpaths would have a neutral effect on farming and forestry, and on biodiversity. Path users with mobility impairments may find Diversion 2 more commodious as it ascends by a gentler gradient than Footpath 1.
- 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 Footpaths start and finish at the same points as the Existing Footpaths, so there is a neutral effect on connectivity.
- 8.12 Diversion 1 will have a neutral effect on people with disabilities. Diversion 2 will have a positive effect on people with mobility impairments (see paragraph 8.9 above).

- 8.13 There will be no change to the number of gaps and gates on the Proposed Footpaths.
- 8.14 There is no material change in gradient between Footpath 1 and Diversion 1. There is a gentler gradient between Points R & S on Diversion 2 than between Points P & S on Footpath 2.
- 8.15 It is not considered that the Proposed Footpaths will require any more maintenance than the Existing Footpaths.
- 8.16 The Proposed Footpaths will have neutral impacts on Safety and Status.
- 8.17 The Existing Footpaths are considered 1.8 metres wide. The Proposed Footpaths will be two metres wide.
- 8.18 The Proposed Footpaths will not remove public access from any feature of interest or place of resort, nor will they diminish the quality or diversity of any views.
- 8.19 It is considered that on balance the proposed diversion is in accordance with the Policy.

9. Risk Management

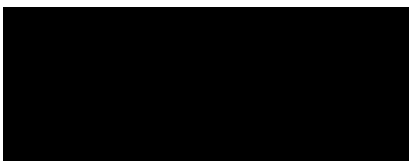
- 9.1 There are no significant risks associated with diverting the footpath.

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 owners of the land.
- 10.3 The Order should be made as proposed.

AUTHORISATION

Under the authorisation granted by the Council on 21st July 2022, the Team Leader: Place Legal Services is hereby requested to seal an Order to divert sections of Public Footpaths BA17/8, BA17/9 & BC14/11 as shown on the Decision Plan and as detailed in the Decision Schedule; and to confirm the Order if no sustained objections are received.

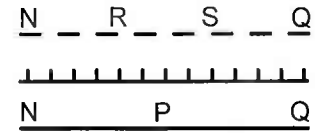
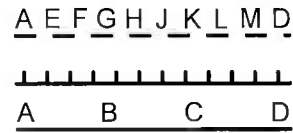


Dated:27/04/2023

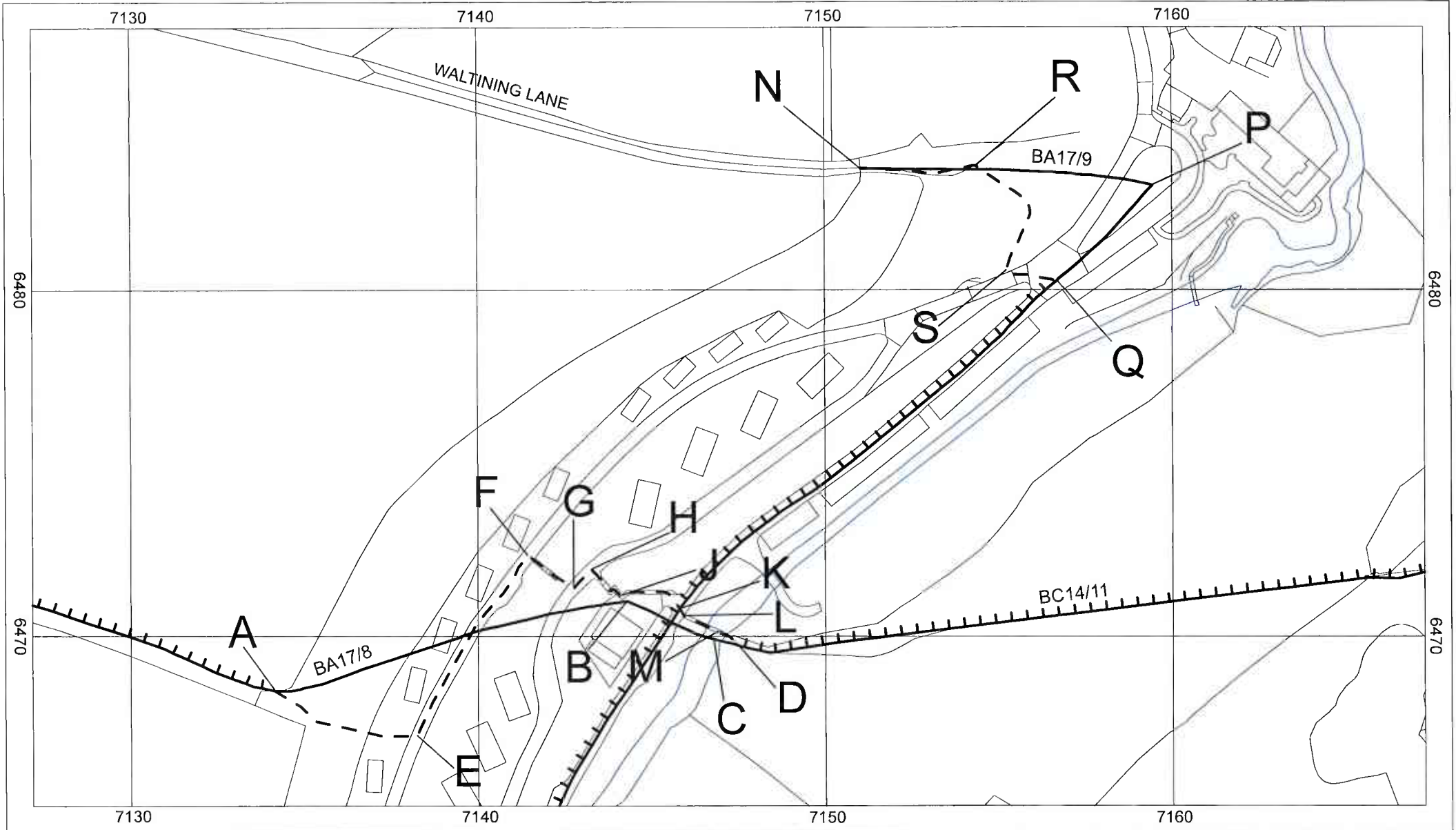
Craig Jackson – Team Manager, Highways Maintenance and Drainage

Appendix 1 - Decision Plan
Public Footpaths BA17/8, BA17/9 &
BC14/11, Bath Mill Lodge Retreat,
Newton St Loe

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 SITES OF EXISTING PATHS OR WAYS

The full width of the section of Public Footpath BA17/8 commencing from grid reference ST 7134 6468 (point A on the Decision Plan) and proceeding in a generally east north-easterly direction for approximately 133 metres, via point B on the Decision Plan, to meet public footpath BC14/11 at grid reference ST 7146 6469 (point C on the Decision Plan); then the full width of the section of Public Footpath BC14/11 commencing from grid reference ST 7146 6469 (point C on the Decision Plan) and proceeding in a generally easterly direction for approximately 8 metres to grid reference ST 7147 6469 (point D on the Decision Plan).

The full width of the section of Public Footpath BA17/9 commencing from a junction with Waltining Lane at grid reference ST 7151 6483 (point N on the Decision Plan) and proceeding in a generally easterly direction for approximately 84 metres to point P on the Decision Plan at grid reference ST 7159 6483, then turning in a generally south-westerly direction for approximately 40 metres to grid reference ST 7156 6480 (point Q on the Decision Plan).

PART 2

DESCRIPTION OF SITES OF NEW PATHS OR WAYS

A public footpath commencing from grid reference ST 7134 6468 (point A on the Decision Plan) and proceeding in a generally east south-easterly direction for approximately 44 metres to grid reference ST 7138 6467 (point E on the Decision Plan), and then turning in a generally north north-easterly direction for approximately 61 metres to grid reference ST 7141 6472 (point F on the Decision Plan), and then turning in a generally east south-easterly direction for approximately 16 metres to grid reference ST 7142 6471 (point G on the Decision Plan), and then turning in a generally north-easterly direction for approximately 8 metres to grid reference ST 7143 6471 (point H on the Decision Plan), and then turning in a generally south-easterly direction for approximately 13 metres to grid reference ST 7144 6471 (point J on the Decision Plan), and then turning in a generally east south-easterly direction for approximately 20 metres to a junction with public footpath BA17/9 at grid reference ST 7145 6470 (point K on the Decision Plan), and then continuing in a generally south-easterly direction for approximately 3 metres to grid reference ST 7145 6470 (point L on the Decision Plan) and then turning in a generally east south-easterly direction for approximately 10 metres to the city of Bath/Newton St Loe boundary at grid reference ST 7146 6470 (point M on the Decision Plan) and then continuing in a generally east south-easterly direction for approximately 8 metres to grid reference ST 7147 6469 (point D on the Decision Plan).

Width: 2 metres from grid reference ST 7134 6468 (point A) to grid reference ST 7147 6469 (point D).

A public footpath commencing from a junction with Waltining Lane at grid reference ST 7151 6483 (point N on the Decision Plan) and proceeding in a generally easterly direction for approximately 34 metres to grid reference ST 7154 6484 (point R on the Decision Plan), then turning in a generally south south-easterly direction for approximately 41 metres to grid reference ST 7155 6480 (point S on the Decision Plan), then turning in a generally easterly direction for approximately 15 metres to grid reference ST 7156 6480 (point Q on the Decision Plan).

Width: 2 metres from grid reference ST 7151 6483 (point N) to grid reference ST 7156 6480 (point Q).

PART 3

LIMITATIONS AND CONDITIONS

None.