

## **1. The Issue**

- 1.1 An application has been made to divert a section of Public Footpath (FP) CL4/18, Mill Lane, Chew Stoke. The landowner wishes to divert the public footpath away from a residential garden and onto a route which is currently a permissive path and has been available for use by the public for many years. The adjoining landowner to the north was consulted at an early stage as the diversion included her land in order for the FP to return to the definitive line. The adjoining landowner is in agreement with the proposal.

## **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 CL4/18 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 of processing an Order and the cost of any required notices in a local newspaper. 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 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 and
  - should consider any material provision of the Joint Rights of Way Improvement Plan.
- 5.5 The Authority must also give due regard to the effect the diversion will have on farming and forestry, biodiversity, members of the public with protected characteristics under the Equality Act 2010.
- 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,

5.8 The Authority will consider the effect on Climate Change.

## **6. Background and Application**

6.1 Public Footpath CL4/18 is recorded on the Definitive Map and Statement which have a relevant date of 26<sup>th</sup> November 1956.

### **6.2 Description of the Route to be Diverted**

The full width of a section of Public Footpath CL4/18 commencing from a junction with Mill Lane at grid reference ST 5567 6175 (point A on the decision plan) and proceeding in a generally northwesterly direction for approximately 146 metres to grid reference ST 5558 6187 (point C on the decision plan) (referred to as “the Existing FP”).

### **6.3 Description of the Proposed Footpath**

A section of public footpath commencing from its junction with Mill Lane at grid reference ST 5567 6175 (point A on the decision plan) and proceeding in a generally north northwesterly direction for approximately 26 metres to grid reference ST 5566 6178 (point D on the decision plan) (referred to as “the southern section of the Proposed FP”) and continuing in a northwesterly direction for approximately 126 metres to grid reference ST 5558 6187 (point C on the decision plan) (referred to as “the northern section of the Proposed FP”). The section from point A to point C is referred to collectively as “the Proposed FP”.

6.4 The Proposed FP will be 2 metres wide between grid reference ST 5567 6175 (point A on the decision plan) and grid reference ST 5567 6176 (point E on the decision plan), and between grid reference ST 5566 6178 (Point D on the decision plan) and grid reference ST 5558 6187 (point C on the decision plan). The Proposed FP will be 1 metre wide between grid reference ST 5567 6176 (point E on the decision plan) and grid reference ST 5566 6178 (point D on the decision plan).

6.5 **Limitations and Conditions** - The Proposed FP will be created without any limitations or conditions. Authorisation of a kissing gate at the field boundary is proposed under section 147 of the Act to prevent the ingress and egress of animals.

## **7. Consultations**

- 7.1 Affected landowners, Chew Stoke Parish Council, national and local user groups, the Ward Councillors and statutory undertakers were all consulted for a period of four weeks (“the Consultation Period”). Additionally, site notices were erected at either end of the section of the affected FP 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 or that they had no plant in the area.
- 7.3 No other responses were received.

## **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:** The Existing FP runs through a residential garden. There has not been a gap in the garden boundary for many years. The southern section of the Proposed FP runs over a permissive path walled off from the garden, which the previous landowner made available for use by the public many years ago. The Existing FP continues through a group of trees in the field to the north. The public have walked around the group of trees on the northern section of the Proposed FP for many years. The diversion is proposed in the interest of the landowners to remove the route from the residential garden and improve privacy for the landowner and ensures the public are walking the definitive line of the FP. 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 Existing FP and Proposed FP start and finish at the same points on the same path. This part of the test should therefore be 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.
- 8.5 The Existing and Proposed FPs are of a similar length, taking into account the nature of walking in the vicinity. The Proposed FP is approximately 6 metres longer than the Existing FP so that it

circumvents a group of trees which are on the line of the Existing FP at point B. This is the line that the public naturally walk. This northern section of the Proposed FP is over more open ground and should therefore be easier to walk than through the trees that the Existing FP goes through. The southern section of the Proposed FP has been surfaced between points A and D with an addition of handrails making this section which has a steeper gradient easier to negotiate. The purpose of the path is not adversely affected. The Proposed FP is therefore substantially as convenient to the public as a consequence of the diversion; this part of the test should therefore be considered to have been met.

- 8.6 **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.**
- 8.7 **Public enjoyment of the Path:** Not walking through a residential garden without a handrail but walking along a surfaced path with a handrail and avoiding the group of trees in the field will be more enjoyable for the public; the diversion will therefore provide an improvement to public enjoyment of the path as a whole; this test should therefore be considered to have been met.
- 8.8 **Effect on other land served by the existing footpath and land affected by the proposed path:** The Proposed FP will have no adverse effect on other land served by the Existing FP or on land affected by the Proposed FP; this test should therefore be considered to have been met.
- 8.9 **Effect on land affected by any proposed new path, taking into account the provision for compensation:** The southern section of the Proposed FP is owned by the Applicant and the northern section of the Proposed FP is owned by a neighbouring farmer who has indicated that she approves of the diversion on her land and waives any right to compensation; this test is therefore considered to have been met.
- 8.10 **The Authority must have regard to the contents of the Rights of Way Improvement Plan.**
- 8.11 The more robust surface of the southern section of the Proposed FP and hand rails will benefit Theme 1 of the Statement of Action – Improving Maintenance and Safety (Deliver improvement schemes to improve network accessibility) and Theme 4 – Improving access for local travel (Action 4.2 Carry out improvements for people with mobility difficulties and visual impairments and Action 4.3 Identify low maintenance gaps in the wider recreational network that will improve accessibility and connectivity). The proposal will have no adverse effect on the Authority achieving other actions which are identified in the Rights of Way Improvement Plan’s Statement of Action.

- 8.12 **The Authority must give due regard to the effect the diversion will have on farming and forestry, biodiversity and members of the public with protected characteristics.**
- 8.13 The Proposed FP will have no adverse effect on farming, forestry or biodiversity as similar ground will be traversed. Path users with mobility and sight impairments will benefit from the firmer surface with handrails on the southern section of the Proposed FP which is on a gradient.
- 8.14 **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.**
- 8.15 Path users with mobility and sight impairments will benefit from a firmer surface and handrails on the southern section of the Proposed FP, rather than through the residential garden. The proposed diversion has a neutral effect on those with other impairments.
- 8.16 A kissing gate will be authorised at the field boundary for stock control purposes but this is in keeping with the nature of the surrounding farmed area and is in keeping with the principles of 'Least Restrictive Access'.
- 8.17 The southern section of the Proposed FP traverses a steep gradient, but this is the same as the Existing FP. Hand rails have been installed on the Proposed FP to assist walkers.
- 8.18 Maintenance of the Proposed FP will be similar to the Existing FP.
- 8.19 The more open aspect of the northern section of the Proposed FP and the addition of handrails on the southern section of the Proposed FP will improve public safety.
- 8.20 The majority of the Proposed FP is 2 metres wide. There is a short section which is one metre wide due to the nature of the ground and the surrounding walls, between point E and point D. The length of Proposed FP which is one metre wide is approximately 21 metres out of a total length of FP CL4/18 which is approximately 251 metres long. This section of the Proposed FP has been in use by the public as a permissive path for many years and no issues have been raised regarding the width. The addition of handrails and improved firmer surface to this section will aid the walker on the incline. It is considered that the reduction of width is acceptable for this short length taking into account the topography and type of use the FP is for.
- 8.21 The Proposed FP does not have any impact on connectivity, status or features of interest.
- 8.22 It is considered that on balance the proposed diversion is in accordance with the Policy.

## **9. Climate Change**

9.1 Public rights of way are a key resource for shifting to low-carbon, sustainable means of transport. The proposal is part of the ongoing management of the network and therefore contributes towards helping to tackle the Climate Emergency.

## **10. Risk Management**

10.1 There are no significant risks associated with diverting the FP.

## **11. Conclusion**

11.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposal is in compliance with the Public Path Order Policy.

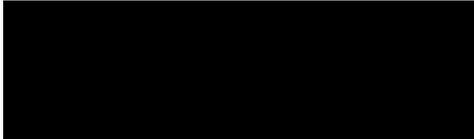
11.2 The diversion Order would be in the interests of the landowner.

11.3 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 CL4/18 as shown on the Decision Plan and detailed in the Decision Schedule and to confirm the Order if no sustained objections are received



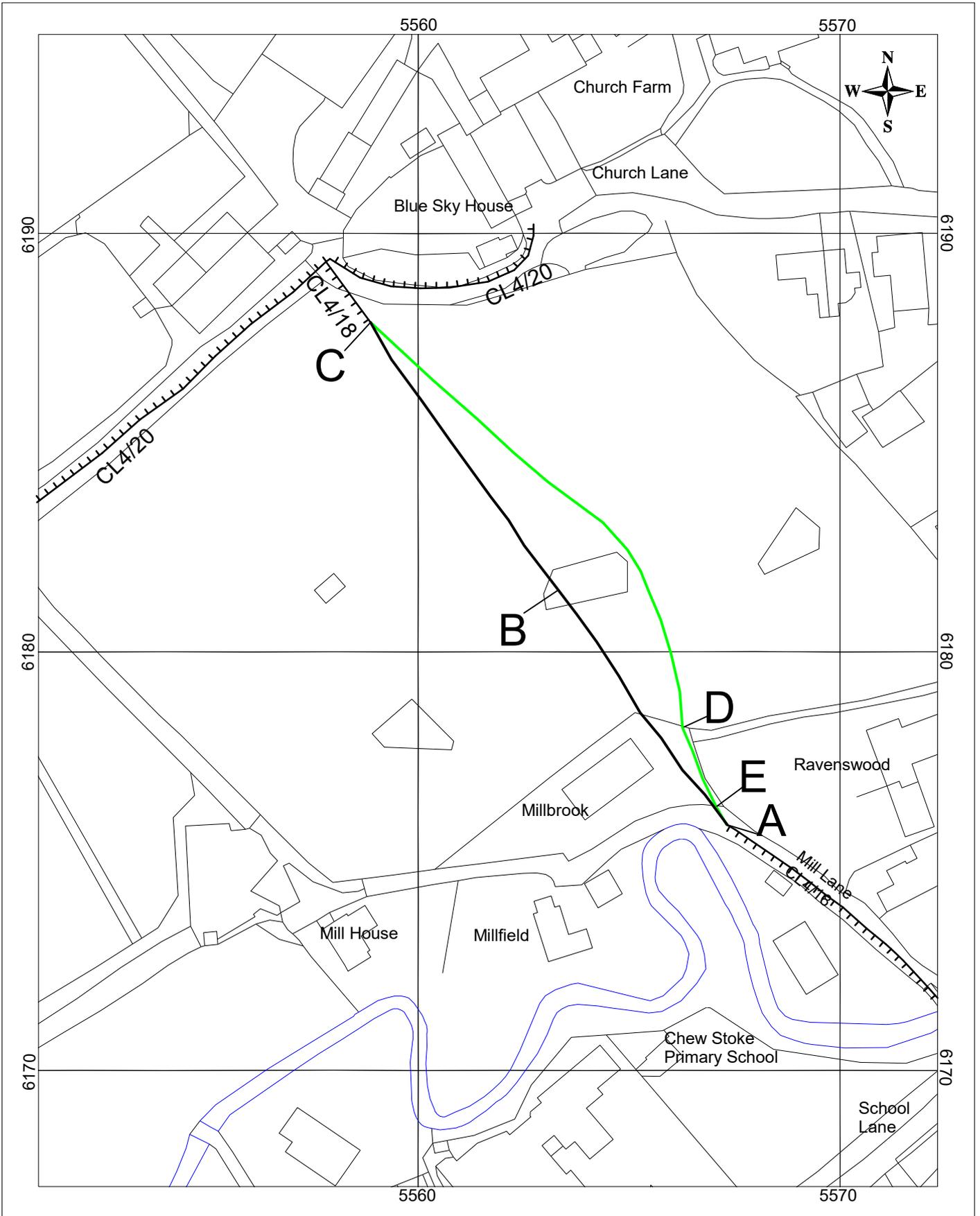
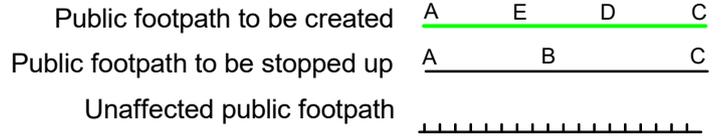
Dated:31/05/2023

Craig Jackson

Team Manager - Highways Maintenance and Drainage

**Appendix 1  
The Decision Plan**

Scale: 1:1,250



## **DECISION SCHEDULE**

### **PART 1**

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

The full width of a section of Public Footpath CL4/18 commencing from a junction with Mill Lane at grid reference ST 5567 6175 (point A on the decision plan) and proceeding in a generally northwesterly direction for approximately 146 metres to grid reference ST 5558 6187 (point C on the decision plan).

### **PART 2**

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

A section of public footpath commencing from its junction with Mill Lane at grid reference ST 5567 6175 (point A on the decision plan) and proceeding in a generally north northwesterly direction for approximately 26 metres to grid reference ST 5566 6178 (point D on the decision plan) and continuing in a northwesterly direction for approximately 126 metres to grid reference ST 5558 6187 (point C on the decision plan).

Width:           1 metre between grid reference ST 5567 6176 (point E on the decision plan) and grid reference ST 5566 6178 (point D on the decision plan)

                      2 metres between grid reference ST 5567 6175 (point A on the decision plan) and grid reference ST 5567 6176 (point E on the decision plan)

                      2 metres between grid reference ST 5566 6178 (Point D on the decision plan) and grid reference ST 5558 6187 (point C on the decision plan).

### **PART 3**

#### **LIMITATIONS AND CONDITIONS**

None.