

## **1. The Issue**

- 1.1 An application has been made to divert a section of Public Footpath (FP) CL17/5, Birchwood Lane, Whitley Batts, Publow. The landowner wishes to divert the public footpath away from a disused farm building and onto a farm track. Under previous ownership, there was not a gap in the hedge onto Birchwood Lane for many years and the land is uncultivated. The Proposed FP follows a farm track with a firmer surface and under current ownership has already been made available for use by the public.

## **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 CL17/5 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 CL17/5 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 CL17/5 commencing from grid reference ST 6256 6276 (point A on the decision plan) and proceeding in a generally east southeasterly direction for approximately 109 metres to a junction with Birchwood Lane at grid reference ST 6266 6271 (point B on the decision plan) (referred to as “the Existing FP”).

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

A section of public footpath commencing from grid reference ST 6256 6276 (point A on the decision plan) and proceeding in a generally south easterly direction for approximately 89 metres to a junction with Birchwood Lane at grid reference ST 6261 6269 (point C on the decision plan) (referred to as “the Proposed FP”).

6.4 The Proposed FP will be 2 metres wide.

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

## **7. Consultations**

7.1 Affected landowners, Publow with Pensford 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

Existing FP and Proposed 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 The adjoining landowner telephoned the Authority to say that he considered that the Proposed FP would impinge on his family's privacy and reduce the value of his property. He was advised that the Authority considers that the Proposed FP is a reasonable distance from his boundary and suitable for the public to use and is considered an improvement over the currently obstructed route over uneven, undeveloped ground. He was advised that if he wished the Proposed FP to be changed he should discuss this with the Applicant/landowner who is his close relative. However, he would need to bear in mind that any changes to the proposal would need to be agreed by the Applicant and the Authority. He did not subsequently contact the Applicant or write in with any comments. The Applicant has confirmed that she does not wish to alter the Proposed FP.
- 7.4 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 over undeveloped land and through a disused farm building which has been in situ for many years. There has not been a gap in the field boundary hedge onto Birchwood Lane for many years. The Proposed FP runs over the existing farm track, which has recently been made available for use by the public after the installation of a metal kissing gate at the boundary with Birchwood Lane. The diversion is proposed in the interest of the landowner to remove the route from the farm buildings so that a section of the land can be fenced and the buildings made secure and redeveloped. The land the Proposed FP is on is not being developed but remaining a farm track. 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 at the same points on the same path. The Proposed FP finishes approximately 55 metres away from the Existing FP on Birchwood Lane, making it substantially as convenient as the Existing FP. 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 Proposed FP is a slightly shorter length than the Existing FP. The Proposed FP is over more even ground, it being an unsurfaced farm track and should therefore be easier to walk than over the uncultivated, uneven land the Existing FP crosses. 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 over the undeveloped, uneven ground and farm buildings but walking along the farm track 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 and Existing FP both run over land owned by the Applicant. The adjoining landowner has indicated he is unhappy with the proximity of the Proposed FP. The Proposed FP is approximately 15 metres from his boundary and approximately 22 metres from his house property. His land abuts Birchwood Lane (class 4 highway) and his house property is approximately 9 metres from Birchwood Lane. The Proposed FP does not cross his land. It is therefore considered that his property will not be adversely affected in the way he describes as walkers can already legitimately walk closer to his property than they would using the Proposed FP. There is no other 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:** compensation relates to “the land over which the right is so created and any land held with it”. It is not clear from this legislation that compensation would be payable to an adjoining landowner and it is not considered by the Authority that there will be an additional invasion of privacy or devaluation of his property due to the diversion of the FP (see paragraph 8.8). However, a claim may be made in writing within six months from the coming into force of the order in respect of which the claim is made. 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 and more even surface and improved junction with Birchwood Lane 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 forestry or biodiversity as similar ground will be traversed. The applicant has asked that the Proposed FP follows the farm track which may benefit farming practices. Path users with mobility and sight impairments will benefit from the flatter, firmer surface of the Proposed FP.

**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 There will be minimal impact on connectivity as the Proposed FP starts on the Existing FP and finishes on Birchwood Lane approximately 55 metres to the west. The nearest FP to the east is approximately 665 metres away, The Proposed FP is approximately 20 metres shorter than the Existing FP. It is considered that the extra approximately 35 metres distance would not adversely affect a leisure walker taking into account the wider Rights of Way network.

8.16 Path users with mobility and sight impairments will benefit from a firmer, more even route on the Proposed FP, rather than over uneven ground and through farm buildings. The proposed diversion has a neutral effect on those with other impairments.

8.17 A kissing gate and pedestrian gate will be authorised at field boundaries 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'.

8.18 The Proposed FP will be easier to maintain as it runs over a compacted farm track, rather than uncultivated land.

8.19 The more open aspect of the Proposed FP will improve public safety, as the Existing FP runs over uneven ground.

8.20 The Proposed FP does not have any impact on gradient, width, status or features of interest.

8.21 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.

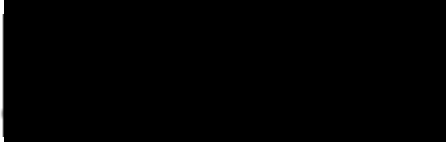
11.2 The diversion Order would be in the interests of the landowner.

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 CL17/5 as shown on the Decision Plan and detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



Dated: 23/05/2023

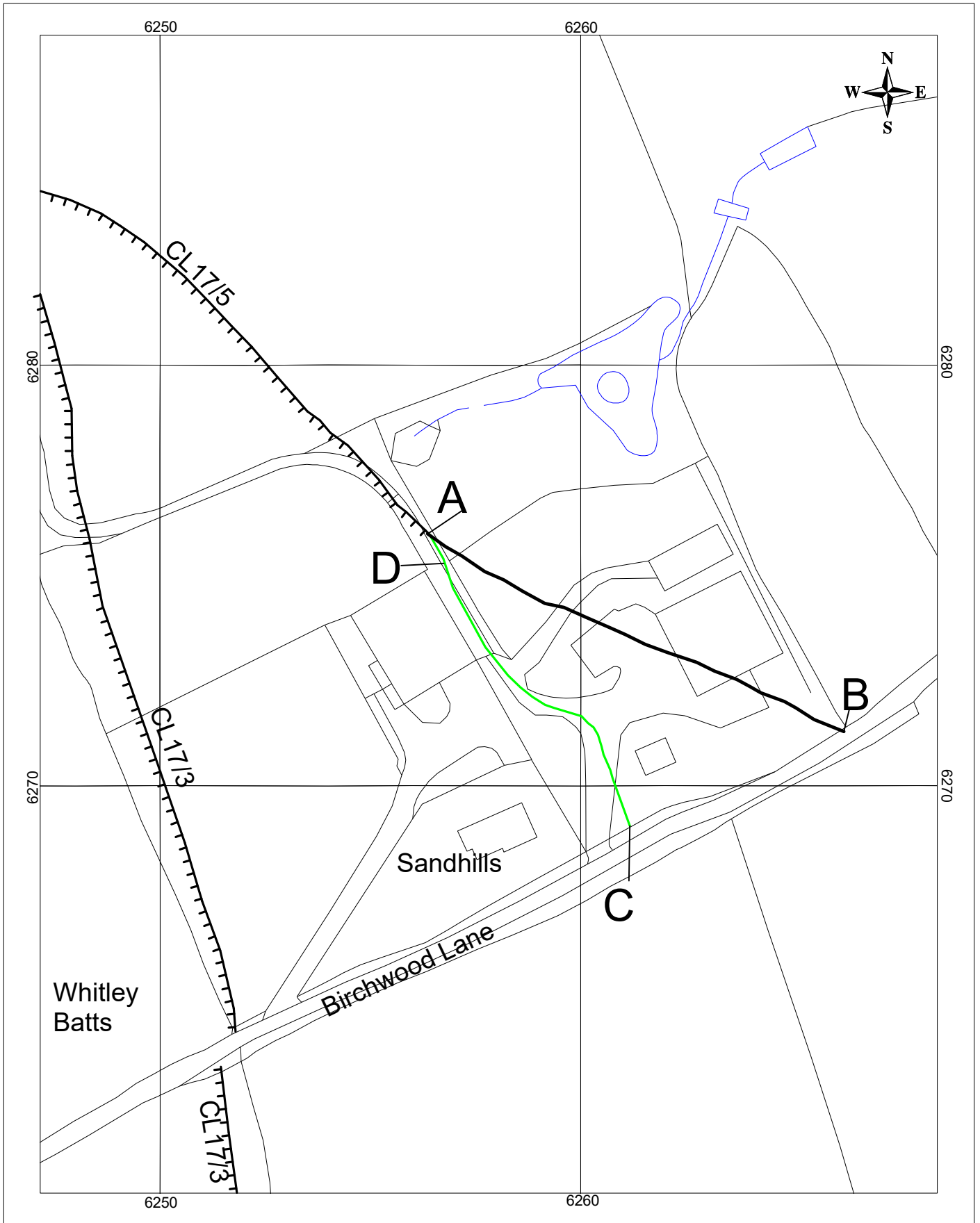
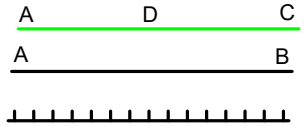
Craig Jackson

Team Manager - Highways Maintenance and Drainage



**Appendix 1**  
**The Decision Plan**  
**CL17/5, Pensford**

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



## **DECISION SCHEDULE**

### **PART 1**

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

The full width of a section of Public Footpath CL17/5 commencing from grid reference ST 6256 6276 (point A on the decision plan) and proceeding in a generally east southeasterly direction for approximately 109 metres to a junction with Birchwood Lane at grid reference ST 6266 6271 (point B on the decision plan)

### **PART 2**

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

A section of public footpath commencing from grid reference ST 6256 6276 (point A on the decision plan) and proceeding in a generally south easterly direction for approximately 89 metres to a junction with Birchwood Lane at grid reference ST 6261 6269 (point C on the decision plan).

Width: 2 metres between grid reference ST 6256 6276 (point A on the decision plan) and grid reference ST 6261 6269 (point C on the decision plan)

### **PART 3**

#### **LIMITATIONS AND CONDITIONS**

None.