

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH CL24/41,
PIT PATH, WESTFIELD – ABANDON AND REMAKE
ORDER**

1. The Issue

- 1.1 The decision to make a Diversion Order was made by Team Manager – Highways Maintenance and Drainage on 29th March 2022 and a Diversion Order (“the Original Order”) was made on 21st April 2022. The Original Order was flawed because article 1 stated that the existing public footpath would be stopped up after seven days from the date of confirmation of the order and article 3 stated that the new public footpath would take effect after fourteen days from the date of confirmation of the order. This meant that, if the Original Order was confirmed, there would be no public footpath for 7 days. A decision is therefore required:
- a) to not proceed with confirmation and to abandon the Original Order; and
 - b) to make a new Diversion Order which states that the existing public footpath is stopped up after 7 days and the new public footpath takes effect after 7 days, ensuring continuity of the public right of way.
- 1.2 The order is proposed to divert a section of the unsurfaced Public Footpath (FP) CL24/41, Westfield, known as the Lower Pit Path, onto a tarmacked permissive path which has been in existence for a number of years and which runs parallel with the existing FP, known as the Upper Pit Path.

2. Recommendation

- 2.1 That the Team Manager - Highways Maintenance and Drainage agrees that the Public Path Diversion Order sealed on 21st April 2022 is not confirmed and is abandoned and grants authorisation for a new Public Path Diversion Order to be made to divert a section of Public Footpath CL24/41 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 application cost is being met by s106 money and covers the cost of processing an Order and the cost of any required notices in a local newspaper. Additional administrative costs will be met by Bath and North East Somerset Council (“the Authority”). A decision not to confirm the Original Order must be notified to every person on whom a copy of the notice of the making of the Original Order was served.

- 3.2 Should an Order be made and confirmed, the Proposed FP will become maintainable at public expense.
- 3.3 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. 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 FP CL24/41 is recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956. The FP was diverted for planning purposes in 1980. An alternative, currently permissive path was created as a result of further development which has been used as a permissive shared use cycle path which runs parallel to the Existing FP. This is the Proposed FP. The Proposed FP is tarmacked and a more direct route. It is widely used and the preferred route by the public. It is proposed to divert the Existing FP to the Proposed FP so

that the Authority has maintenance liability for the Proposed Footpath and the Existing FP can revert to the landowners and its natural state. All of the local consultees are aware of the necessity to abandon the Original Order and make a replacement order.

6.2 Description of the Route to be Diverted

The full width of a section of Public Footpath CL24/41 commencing from grid reference ST 6700 5416 (point A on the decision plan) and proceeding in a generally east northerly direction for approximately 197 metres to grid reference ST 6718 5426 (point B on the decision plan) and turning in a generally southeasterly direction for approximately 6 metres to grid reference ST 6718 5425 (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 grid reference ST 6700 5416 (point A on the decision plan) and proceeding in a generally east northerly direction for approximately 202 metres to grid reference ST 6718 5425 (point C on the decision plan) (referred to as “the Proposed FP”).

6.4 The width of the Proposed FP is 3.5 metres between grid reference ST 6700 5416 (point A on the decision plan) and grid reference ST 6704 5417 (point D on the decision plan); 2.8 metres between grid reference ST 6704 5417 (point D on the decision plan) and grid reference ST 6705 5418 (point E on the decision plan); 3.5 metres between grid reference ST 6705 5418 (point E on the decision plan) and grid reference ST 6718 5425 (point F on the decision plan) and 3 metres between grid reference ST 6718 5425 (point F on the decision plan) and grid reference ST 6718 5425 (point C on the decision plan).

6.5 **Limitations and Conditions** - The Proposed FP will be created without any limitations or conditions.

7. Consultations

7.1 Affected landowners, Westfield Parish Council, national and local user groups, the Ward Councillors and statutory undertakers were all consulted for a period of four weeks (“pre-order consultation”). Additionally, site notices were erected at either end of the section of the Existing FP and on the Authority’s website to seek the views of members of the public.

7.2 In response to the pre-order consultation, a number of statutory undertakers stated that their plant would not be affected.

7.3 There are three sets of landowners affected by the proposal. However, the public already use the Proposed FP and no physical changes are proposed on the ground so there will be very little effect in practical terms. The route of the Existing FP will return to the landowners benefit if the Existing FP is stopped up. One set of landowners has not

responded to the pre-order consultation, one set asked to be kept informed of progress and one thought the proposal was 'sensible'.

- 7.4 No other responses were received.
- 7.5 No objections were received to the Original Order which was publicised between 5th May 2022 – 2nd June 2022.

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 paths 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 undeveloped land. The Proposed FP will run parallel to the Existing FP but on a tarmacked route which is currently a permissive route. The Proposed FP currently lacks clarity for maintenance and this will be improved by the diversion as only one FP will exist and this will be maintained by the Authority. The diversion is proposed in the interest of the landowners to remove the ambiguousness and responsibility of two routes running parallel and create one route for all users, returning the Existing FP to landowners use and benefit. 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. The Existing FP is unsurfaced and gets overgrown and muddy which is not ideal for an urban footpath. The Proposed FP is tarmacked is therefore an improved surface to walk over. The Proposed FP is better suited to an urban setting and considerably wider than the Existing FP. The Proposed FP is therefore considered to be 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:** The Existing FP is unsurfaced. The Proposed FP is tarmacked, making it a more suitable surface for an urban path. The Proposed FP is on higher ground allowing slightly improved views over the surrounding area; the diversion should therefore improve 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 runs parallel to the Existing FP and the same landowners are affected by both paths. The Proposed FP is already used by the public as an alternative route. There is 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 Proposed FP is already used by the public with permission, as an alternative route. The landowners will have only one route over their land as a result of the diversion and maintenance of the Proposed FP will fall on the Authority, creating no adverse effect on land or 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 proposal will have no adverse effect on the Authority achieving actions which are identified in the Rights of Way Improvement Plan's Statement of Actions. The Existing FP has staggered barriers (at point B on the decision plan) which will no longer be necessary. The Proposed FP is tarmacked and is predominantly 3.5 metres wide, which will promote Action 4.3 - *"Identify and carry out improvements for people with mobility difficulties and visual impairments"*.
- 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 effect on farming or forestry. The public will no longer have a right to walk through the undeveloped wooded area, which may improve biodiversity. Path users with mobility and sight impairments will benefit from less barriers and a tarmacked surface.
- 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 The Proposed FP is a slightly more direct route, thereby improving connectivity.

- 8.16 Path users with mobility and sight impairments will benefit from a more open, tarmacked route on the Proposed FP, rather than through an undeveloped area and the removal of the staggered barrier at point B. The proposed diversion has a neutral effect on those with other impairments.
- 8.17 The staggered barriers at point B will no longer be required, thereby improving access.
- 8.18 Maintenance will be improved as the Proposed FP is a tarmacked route outside of the undeveloped area.
- 8.19 Safety will be improved for the public as the Proposed FP is wider and has an improved surface.
- 8.20 The width of the Proposed FP is predominantly approximately 3 metres wide, which is wider than the Existing FP.
- 8.21 The Proposed FP is at a higher ground level than the Existing FP, thereby creating improved views of the surrounding area.
- 8.22 The Proposed FP does not have any impact on gradient or status.
- 8.23 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 is no benefit to continuing with the Original Order which is flawed.
- 10.2 There is no significant risk associated with diverting the footpath onto an improved alignment.

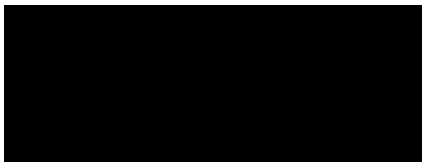
10. Conclusion

- 10.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposals do not contravene the Public Path Order Policy.
- 10.2 The Order would be in the interest of the landowners.
- 10.3 The Diversion Order sealed on 21st April 2022 should not be confirmed and should be abandoned and a new Diversion Order should be made with the stopping up and creation of a public right of way being effective concurrently.

AUTHORISATION

Under the authorisation granted by the Council on 10 May 2018, the Place Law Manager is hereby requested to seal an Order to divert a section of Public Footpath CL24/41 as shown on the Decision Plan and detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.

The decision is made not to confirm and to abandon the Bath and North East Somerset Council (Public Footpath CL24/41, Pit Path, Westfield) Public Path Diversion Order 2022 sealed on 21st April 2022.



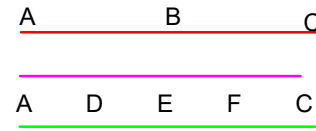
Dated: 15/06/2022

Craig Jackson

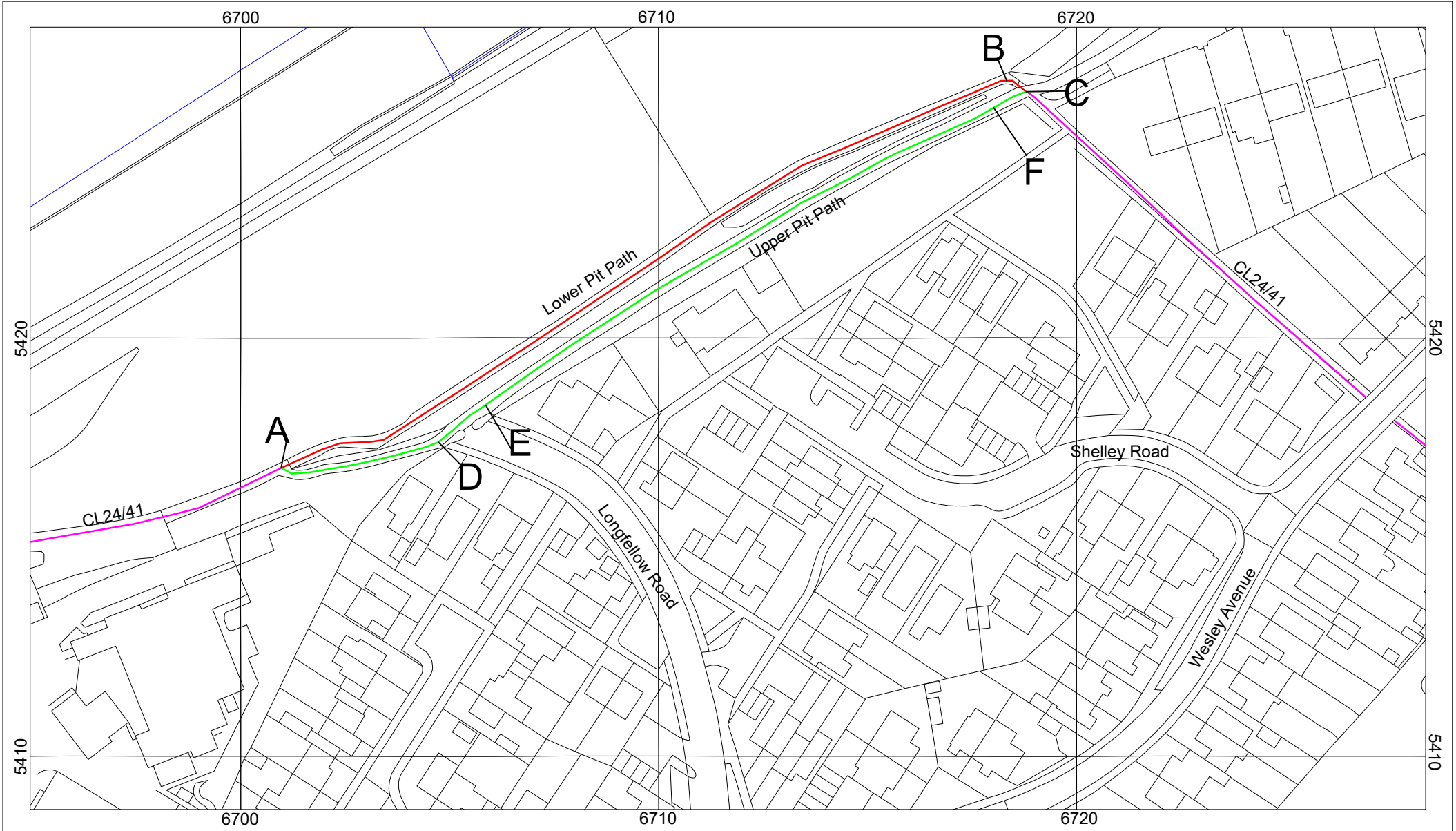
Team Manager - Highways Maintenance and Drainage

**Appendix 1
Public Footpath CL24/41, Westfield
Decision plan**

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



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 CL24/41 commencing from grid reference ST 6700 5416 (point A on the decision plan) and proceeding in a generally east northerly direction for approximately 197 metres to grid reference ST 6718 5426 (point B on the decision plan) and turning in a generally southeasterly direction for approximately 6 metres to grid reference ST 6718 5425 (point C on the decision plan)

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from grid reference ST 6700 5416 (point A on the decision plan) and proceeding in a generally east northerly direction for approximately 202 metres to grid reference ST 6718 5425 (point C on the decision plan)

Width: 3.5 metres between grid reference ST 6700 5416 (point A on the decision plan) and grid reference ST 6704 5417 (point D on the decision plan)

2.8 metres between grid reference ST 6704 5417 (point D on the decision plan) and grid reference ST 6705 5418 (point E on the decision plan)

3.5 metres between grid reference ST 6705 5418 (point E on the decision plan) and grid reference ST 6718 5425 (point F on the decision plan)

3 metres between grid reference ST 6718 5425 (point F on the decision plan) and grid reference ST 6718 5425 (point C on the decision plan)

PART 3

LIMITATIONS AND CONDITIONS

None.