

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath (FP) CL21/48, at Sleight Farm, Timsbury. The landowners wish to divert the public footpath away from the farmyard and buildings which they then hope to develop. It was noted that the definitive line of the FP crossed a gated cattle grid at the entrance to Sleight Farm where the applicant wishes to have a locked gate, so it has been agreed to also divert this section of the FP in order to avoid the cattle grid.

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 two sections of Public Footpath CL21/48 as detailed on plan 1 and plan 2 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 FPs 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 The County Council of Avon Public Rights of Way Definitive Map and Statement Modification Order no. 7 1989 was made on 1st June 1989 and confirmed on 1st July 1991, which recorded FP CL21/48 as a public footpath.

6.2 Description of the Route to be Diverted

- (i) The full width of a section of Public Footpath CL21/48 commencing from grid reference ST 6619 5922 (point A on Decision Plan 1) and proceeding in a generally westerly direction for approximately 60 metres to grid reference ST 6613 5922 (point B on Decision Plan 1) and turning in a generally west northwesterly direction for approximately 106 metres to grid reference ST 6604 5926 (point C on Decision Plan 1) (referred to as “Existing FP 1”) and
- (ii) The full width of a section of Public Footpath CL21/48 commencing from a junction with B3115 Hayeswood Road at grid reference ST 6646 5892 (point E on Decision Plan 2) and proceeding in a generally north northwesterly direction for approximately 8 metres to grid reference ST 6645 5892 (point F on Decision Plan 2) and continuing in a generally north northwesterly direction for approximately 15 metres to grid reference ST 6645 5894 (point G on Decision Plan 2) (referred to as “Existing FP 2” and cumulatively known as “the Existing FPs”).

6.3 Description of the Proposed Footpath

- (i) A public footpath commencing from grid reference ST 6619 5922 (point A on Decision Plan 1) and proceeding in a generally northwesterly direction for approximately 128 metres to grid reference ST 6609 5929 (point D on Decision Plan 1) and turning in a generally west southwesterly direction for approximately 63 metres to grid reference ST 6604 5926 (point C on Decision Plan 1) (referred to as “Proposed FP 1”) and

- (ii) A public footpath commencing from a junction with B3115 Hayeswood Road at grid reference ST 6646 5892 (point E on Decision Plan 2) and proceeding in a generally northerly direction for approximately 12 metres to grid reference ST 6646 5893 (point H on the Decision Plan 2) and turning in a generally northwesterly direction for approximately 12 metres to grid reference ST 6645 5894 (point G on Decision Plan 2) (referred to as "Proposed FP 2"). Proposed FP 1 and Proposed FP 2 are cumulatively known as "the Proposed FPs").

6.4 The Proposed FPs will be 2 metres wide.

6.5 **Limitations and Conditions** - The Proposed FPs will be created without any limitations or conditions. Authorisation of gates at field boundaries is proposed where required under section 147 of the Act to prevent the ingress and egress of animals. Two gates (a kissing gate and a Bristol style gate) will be authorised on Proposed FP 1, replacing one existing kissing gate on Existing FP 1. Two kissing gates will be authorised on Proposed FP 2 replacing one existing field gate on Existing FP 2.

7. Consultations

7.1 Affected landowners, Timsbury 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 Existing FPs and Proposed FPs 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 Bristol Water responded to the consultation in August advising that they had no objection to the proposal, but that there was apparatus in the vicinity of Proposed FP1. As there was no plan to dig down on the proposed route, but just for the applicant to fill in the existing ruts, this did not appear to create a problem. However, in November, Bristol Water contacted us again with an objection. This was due to their realisation that the route they will need to use for their maintenance vehicles to get from Hayeswood Road to their reservoir once the development has taken place will be taking the same course as Proposed FP1. Currently they drive through the farmyard on the same route as Existing FP1. Bristol Water have an easement over Proposed FP1, which has been in existence for a number of years. However, the route over Proposed FP1, which was originally stoned, has fallen into disuse and covered in soil (hence the ruts that we required to be infilled). Bristol Water intend to clear the 4 metre wide surface of the track, so that it can again be used by their maintenance vehicles. Bristol Water were advised that this shared use was not considered a problem by the Authority and that the Authority would be maintaining the 2 metre wide FP to pedestrian standard and Bristol Water can maintain the route to

their vehicular standard. After further correspondence, the objection was withdrawn.

- 7.4 A Ward Councillor responded that he had no problem with the proposal but asked that we consider equalities when considering the proposal.
- 7.5 15 positive responses from local users were received. These can be viewed at Appendix 3.
- 7.6 The landowners have agreed to improve the surface of the Proposed FPs where necessary before the proposal can take effect. This will be to a standard fit for use by the public and as agreed by the Authority. This addresses the concern raised by one respondent.
- 7.7 Comments regarding the planning process for any development of the farm are not under consideration in this report.
- 7.8 A number of respondents mentioned their support for a permissive path which has been proposed, to run from Proposed FP2 towards the village of Timsbury, if this proposal goes ahead. This is not under consideration by the Authority but may be pursued separately by the landowners. Comments regarding this permissive path have not been included in this report.

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:** Existing FP 1 runs through a farmyard. Proposed FP 1 runs around the buildings to the north along an existing farm track. The land Proposed FP 1 runs over is not being developed but remaining a farm track. The diversion is proposed in the interest of the landowner to remove the route from the farmyard. Existing FP 2 runs over a cattle grid at the entrance to the farm. Proposed FP 2 runs to the east of the cattle grid through new gaps to be made in the boundary wall and fence. The diversion is proposed in the interest of the landowner to allow the landowner to lock the field gate at the entrance to the farm without causing an obstruction to Existing FP 2. 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 FPs and Proposed FPs 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 Existing FP 1 is approximately 166 metres and Proposed FP 1 is approximately 191 metres, adding approximately 25 metres in length to the FP. However, the full length of the public footpath (which continues across the parish boundary as FP CL9/66 is over 1.5 km and a user would then continue on over other FPs across fields to continue their journey. It is considered that the approximately 25 metres extra distance would not adversely affect a leisure walker taking into account the wider Rights of Way network and the nature of walking in the vicinity. Proposed FP 1 runs over similar ground to the remainder of the FP, some being surfaced and some being over an unsurfaced farm track and should therefore be similar in difficulty as Existing FP 1. The purpose of the path is not adversely affected. Proposed FP 1 is therefore substantially as convenient to the public as a consequence of the diversion.
- 8.6 Proposed FP 2 is the same approximate length as Existing FP 2. Proposed FP 2 leaves the tarmacked entranceway and skirts the cattle grid through a field, which is a similar surface to the remainder of the FP and should therefore be similar in difficulty as Existing FP 2. The purpose of the path is not adversely affected. Proposed FP 2 is therefore substantially as convenient to the public as a consequence of the diversion.
- 8.7 This part of the test should therefore be considered to have been met.
- 8.8 **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.**
- 8.9 **Public enjoyment of the Path:** Not walking through the farm yard but walking along a farm track with improved views on Proposed FP 1 and avoidance of the cattle grid at Existing FP 2 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.
- 8.10 **Effect on other land served by the existing footpath and land affected by the proposed path:** The Proposed FPs and Existing FPs all run over land owned by the Applicant. The Proposed FPs do not have an adverse effect on other land served by the Existing FPs or on land affected by the Proposed FPs; this test should therefore be considered to have been met.

- 8.11 **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 FPs with regard to compensation as the land affected by the Existing and Proposed FPs are all owned by the Applicant; this test is therefore considered to have been met.
- 8.12 **The Authority must have regard to the contents of the Rights of Way Improvement Plan.** The removal of Proposed FP 1 from the farm yard and improved surface at Proposed FP 2 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.
- 8.13 **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.**
- 8.14 Proposed FP 1 removes the FP from the farmyard to go along a farm track. Farming practices will therefore be improved if they are continued at the farm. Members of the public with sight, hearing or mobility impairments will benefit from the removal of Existing FP 1 from the farm yard and Existing FP 2 from crossing a cattle grid. The proposal will have no adverse effect on forestry or biodiversity as similar ground will be traversed.
- 8.15 **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.**
- 8.16 There will be no impact on connectivity as the Proposed FPs start and finish at the same points.
- 8.17 Members of the public with sight, hearing or mobility impairments will benefit from the removal of Existing FP 1 from the farmyard and Existing FP 2 from crossing a cattle grid. The proposed diversion has a neutral effect on those with other impairments.
- 8.18 Kissing gates or pedestrian gates 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’.
- 8.19 The gradient of the Proposed FPs is similar to the remainder of the FP as the FP crosses gently undulating hills.

- 8.20 The more open aspect of Proposed FP 1 away from the farm yard and the removal of having to cross a cattle grid will improve public safety.
- 8.21 There are improved views across the valley from Proposed FP 1 which will add to the features of interest.
- 8.22 The Proposed FPs do not have any impact on connectivity, maintenance, width 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

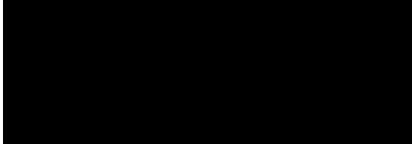
- 10.1 There are no significant risks associated with diverting the FP.

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 21st July 2022, the Team Leader: Place Legal Services is hereby requested to seal an Order to divert two sections of Public Footpath CL21/48 as shown on the Decision Plan and detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



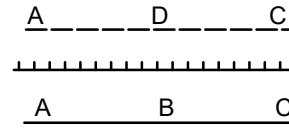
Dated: 28/11/2023

Craig Jackson

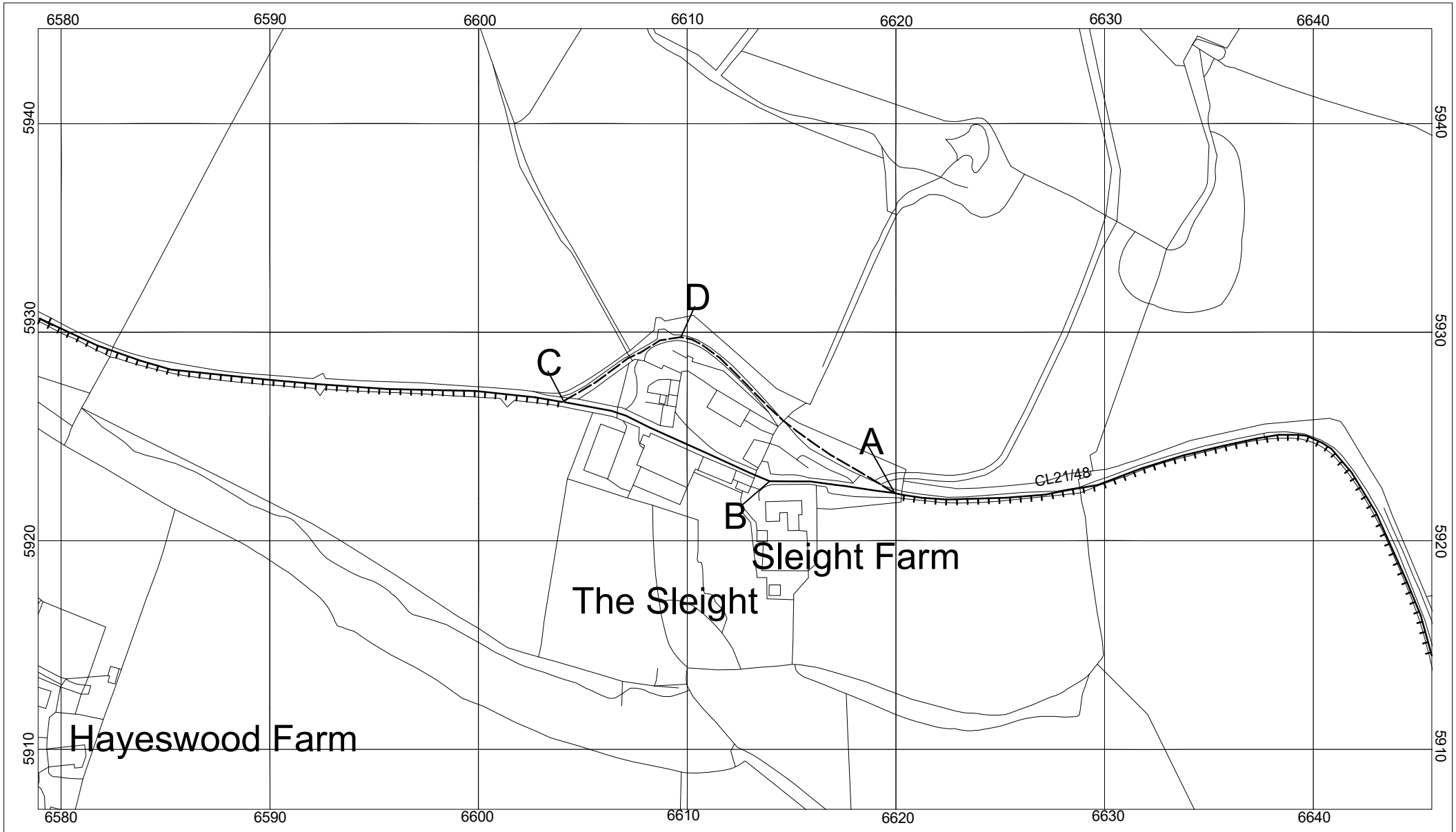
Team Manager - Highways Maintenance and Drainage

Appendix 1
Decision Plan 1

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



Scale: 1:2,500



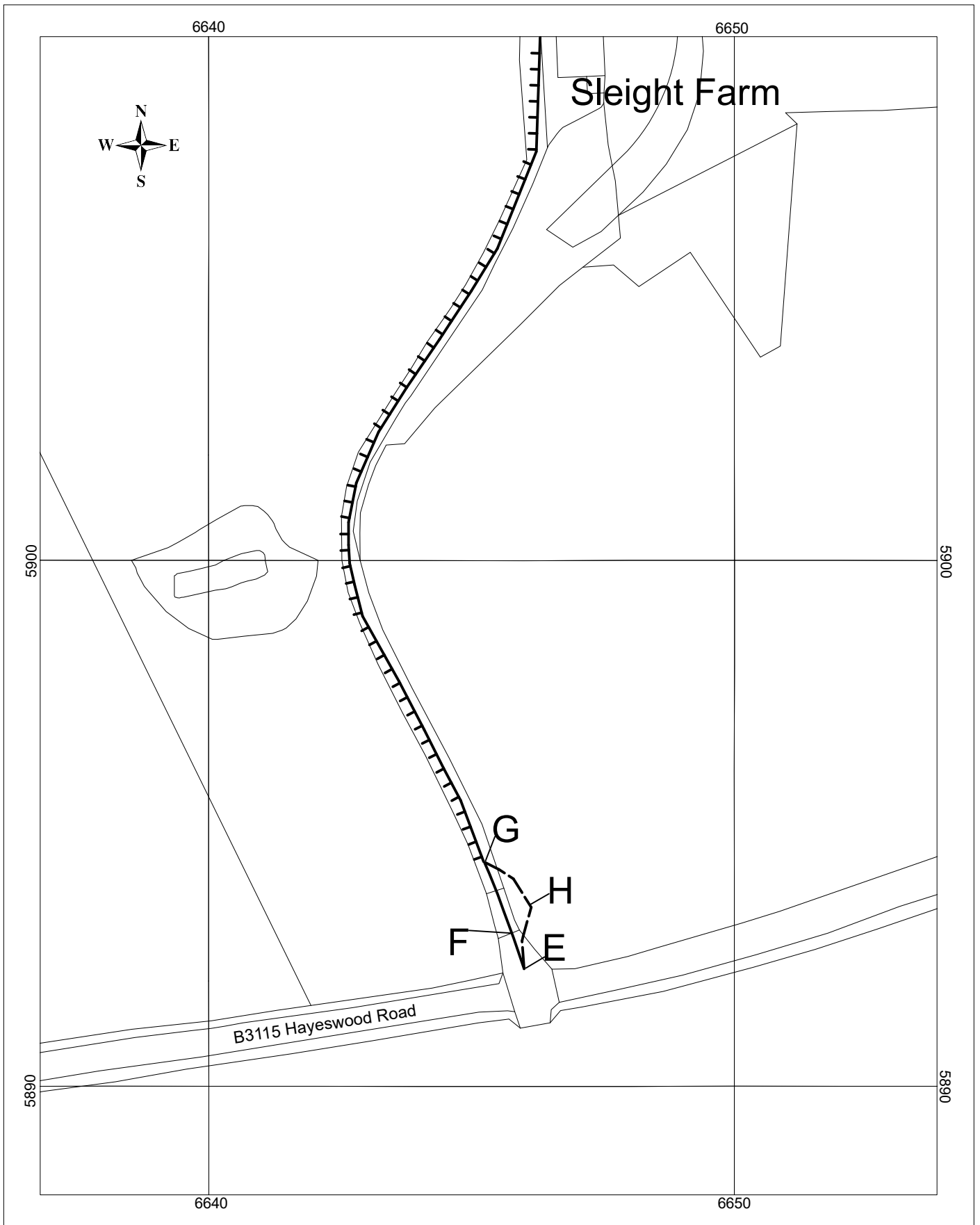
**Appendix 1
Decision Plan 2**

Public footpath to be created E - - - H - - - G

Unaffected public footpath |||||

Public Footpath to be stopped up E F G

Scale: 1:1,000



SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of a section of Public Footpath CL21/48 commencing from grid reference ST 6619 5922 (point A on Decision Plan 1) and proceeding in a generally westerly direction for approximately 60 metres to grid reference ST 6613 5922 (point B on Decision Plan 1) and turning in a generally west northwesterly direction for approximately 106 metres to grid reference ST 6604 5926 (point C on Decision Plan 1).

The full width of a section of Public Footpath CL21/48 commencing from a junction with B3115 Hayeswood Road at grid reference ST 6646 5892 (point E on Decision Plan 2) and proceeding in a generally north northwesterly direction for approximately 8 metres to grid reference ST 6645 5892 (point F on Decision Plan 2) and continuing in a generally north northwesterly direction for approximately 15 metres to grid reference ST 6645 5894 (point G on Decision Plan 2).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from grid reference ST 6619 5922 (point A on Decision Plan 1) and proceeding in a generally northwesterly direction for approximately 128 metres to grid reference ST 6609 5929 (point D on Decision Plan 1) and turning in a generally west southwesterly direction for approximately 63 metres to grid reference ST 6604 5926 (point C on Decision Plan 1)

Width: 2 metres between grid reference ST 6619 5922 (point A on Decision Plan 1) and grid reference ST 6604 5926 (point C on Decision Plan 1)

A public footpath commencing from a junction with B3115 Hayeswood Road at grid reference ST 6646 5892 (point E on Decision Plan 2) and proceeding in a generally northerly direction for approximately 12 metres to grid reference ST 6646 5893 (point H on Decision Plan 2) and turning in a generally northwesterly direction for approximately 12 metres to grid reference ST 6645 5894 (point G on Decision Plan 2)

Appendix 2 The Decision Schedule

Width: 2 metres between grid reference ST 6646 5892 (point E on Decision Plan 2) and grid reference ST 6645 5894 (point G on Decision Plan 2)

PART 3

LIMITATIONS AND CONDITIONS

None.

Appendix 3

Local Comments during consultation

1. The proposal is very sensible and keeps walkers away from the farmyard, which has always posed a problem for users if full of farm animals. The Sleight farm footpath is a well used valuable asset for all people enjoying the beautiful views of the surrounding countryside.... (SR)
2. I live in Timsbury and have walked along the path there many times and so am familiar with the problems of the current route. As a result I fully support the proposals. (CG)
3. I live in Timsbury and have walked along the path there many times and so am familiar with the problems of the current route. As a result I fully support the proposals. (MN)
4. I believe both the changes are not contentious and in fact improve the walk to and past Sleight Farm. The proposed path shown on Plan 1 will have enhanced views to the north and will not add any significant distance. The changes shown on Plan 2 are also an improvement as walking over a cattle grid is removed... I believe the overall package will greatly enhance access to a major local feature. (LC)
5. The proposed footpath diversion seems a positive one... access a footpath that gives good access to a beautiful walking route that has been available to all to use that were brave enough to try it. The change of route to go around the farm rather than through it seems fair and doesn't make any difference , in fact I would imagine better views. I hope this plan goes ahead. (MW)
6. Having reviewed the above proposal I would like to register my support for this scheme(SC)
7. I believe the proposed footpath diversion around Sleight farm is of little consequence to the walked route with possibilities of improved views We (my wife and self) fully support this diversion application. (T & H S)
8. I have no objection to the footpath diversion around Sleight Farm. (SF)
9. I think the amended route makes good sense. No inconvenience to users of the footpath. slight improvements to the view and owners of the farm will benefit from increased privacy (SJ)
10. I am writing to express my support for the proposal that you have before you.... The rerouted path offers good views over the countryside to the north of The Sleight and is a perfectly good replacement path between points A and C. (CS)

Appendix 3
Local Comments during consultation

11. I would like to add my support to the proposed footpath diversion at Sleight farm Timsbury. It would be a massive improvement. (MT)
12. I have consider the plan for the above and confirm that I have no objection to the proposed footpath diversion and in fact consider it to be an improvement. (MH)
13. I confirm that I have no objection to the proposed Footpath Diversion at Sleight Farm and am of the opinion that this will be an improvement to the existing path. (TM)
14. Plan 1 Diversion A-C via D. The beginning and end sections of the proposed diversion are good solid tracks. Looking from each end, it's difficult to determine the nature of the longer mid-section that runs to the north of the farm buildings. The track looks grassy and at a lower elevation than the adjacent farmyard and buildings. My concern is that if this mid-section might become a mire in wetter times of the year, in part due to run-off from the yard and buildings. It may need hard-core/gravel to raise it a little to make it an accessible, all-weather path like the existing route through the farmyard. Plan 2 - Providing a path around the cattle grid would be welcomed.