

**APPLICATION FOR A PUBLIC PATH DIVERSION  
ORDER AFFECTING PUBLIC FOOTPATHS CL7/9 &  
CL7/10 IN COMPTON MARTIN**

**1. The Issue**

- 1.1 An application has been made to divert sections of Public Footpaths CL7/9 & CL7/10 in Compton Martin in order to record the routes that have been walked by the public since drainage ditches, connected to Chew Valley Lake, were built on the land in the 1950s.

**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 CL7/9 & 7/10 as detailed on the plan attached at Appendices 1 & 2 ("Decision Plans 1 & 2") and in the schedule attached at Appendix 3 ("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 Footpaths 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 Development Management 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 CL7/9 & CL7/10 are recorded on the Definitive Map and Statement which have a relevant date of 26<sup>th</sup> November 1956. The legal alignment has remained unchanged ever since.

6.2 The Existing Footpaths cross drainage ditches which were constructed at the time Chew Valley Lake was created in the 1950s. Since their construction, it has not been possible to walk the full legal lines of these footpaths. Reinstatement of these lines would have required the building of bridges across these ditches in no less than six places.

### **6.3 Description of the Existing Footpaths**

The proposal is to divert the following sections of footpath:

6.4 The full width of the section of Public Footpath CL7/9 commencing from grid reference ST 5513 5877 (point A on Decision Plan 1) and proceeding in a generally easterly direction for approximately 347 metres, via point B on Decision Plan 1, to a junction with the Bristol Road at grid reference ST 5541 5895 (point C on Decision Plan 1). This route is referred to as "Footpath 1".

6.5 The full width of the section of Public Footpath CL7/10 commencing from grid reference ST 5472 5893 (point F on Decision Plan 2) and proceeding in a generally northerly direction, via point G on Decision Plan 2, for approximately 92 metres to grid reference ST 5470 5901 (point H on Decision Plan 2). This route is referred to as "Footpath 2".

6.6 These routes are referred to collectively as the "Existing Footpaths".

### **6.7 Description of the Proposed Footpaths**

The proposal diverts the Existing Footpaths to the following routes:

6.8 A public footpath commencing from grid reference ST 5513 5877 (point A on Decision Plan 1) and proceeding in a generally east north-easterly direction for approximately 362 metres, via point D on Decision Plan 1, to a junction with Bristol Road at grid reference ST 5541 5892 (point E on Decision Plan 1). This route is referred to as "Diversion 1".

6.9 A public footpath commencing from grid reference ST 5472 5893 (point F on Decision Plan 2) and proceeding in a generally northerly direction for approximately 88 metres, via point J on Decision Plan 2, to grid reference

ST 5470 5901 (point H on Decision Plan 2). This route is referred to as "Diversion 2".

6.10 These routes are referred to collectively as the "Proposed Footpaths" and will be two metres wide throughout.

6.11 **Limitations and Conditions**

No limitations or conditions are proposed. The Proposed Footpaths cross field boundaries and authorisation of pedestrian gates is proposed at three field boundaries under section 147 of the Act, to prevent the ingress and egress of animals.

**7. Consultations**

7.1 Affected landowners, Compton Martin Parish Council, national and local user groups, the Ward Councillor 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 each of the Proposed Footpaths 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. A response was received from Sky Telecommunications Services to the effect that telecoms apparatus might be affected; however they did not object to the proposals.

7.3 The local Ramblers representative stated that he had no objections, and the Compton Martin Parish Council expressed their positive support for the proposals.

7.4 No other comments were received in relation to these 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:** Re-instatement of the existing legal line of each footpath would involve not only the building of bridges across the various drainage ditches, but also the installation of extra gates between these bridges for stock control purposes; the relevant landowners would then be responsible for maintaining these extra gates, as well as for 75% of the cost of replacing them in the longer term. With the proposed diversion of the footpaths avoiding the need for these extra gates, the test of expediency in the landowners' interests is 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:** Diversion 1 starts at the

same point as Footpath 1 and finishes at a point on Bristol Road, which is 31 metres away from the end point of the Footpath 1 and which connects with it. Because these two footpaths connect in this way, the finish point of Diversion 1 is considered substantially as convenient to the public as the finish point of the Footpath 1, and this test should therefore be considered to have been met.

Diversion 2 will not alter the start or finish point of Footpath 2 so again this test is 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. The overall length of Diversion 1 will be 14 metres longer than the length of Footpath 1, and the overall length of Diversion 2 will be 4 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 - such that these changes in distance for the walker are likely to represent very insignificant changes in distance to their overall walk. Furthermore the inconvenience of having to pass through multiple additional gates either side of the various drainage ditches (see paragraph 8.2 above) will be avoided by the proposed diversions. It is therefore considered that the Proposed Footpaths will not be 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 60 years. There is no difference between the Proposed and Existing Footpaths in terms of the views enjoyed; neither start point is altered; the finish point of Diversion 1 is only altered marginally and the finish point of Diversion 2 not at all. The effect on public enjoyment is therefore improved or neutral.
- 8.7 **Effect on other land served by the existing footpaths and land affected by the proposed footpaths:** 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, and no adverse comments have been received from anyone with an interest in land crossed by any of these routes. 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:** As at the date of this report, no such landowner has expressed an intention to claim compensation. In the event that any affected landowner should subsequently wish to do so, they would need to show either that the value of their land had depreciated

as a consequence of the diversion, or that their enjoyment of their land had been disturbed. However, as the Proposed Footpaths constitute routes which have already been walked for more than 60 years, instead of the Existing Footpaths, it is considered that it would be very difficult to substantiate a compensation claim made on either of these grounds.

- 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 or visual impairments may find the Proposed Footpaths more commodious to use due to the avoidance of bridge crossings and the need to pass through less gates (see paragraph 8.2 above).
- 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 Diversion 1 starts at the same point as Footpath 1 and at the same public highway approximately 31 metres away from where Footpath 1 currently finishes. Diversion 2 starts and finishes at the same points as Footpath 2. There is therefore only a very minimal effect on connectivity.
- 8.12 As the Proposed Footpaths will pass through fewer gates and avoid a number of bridge crossings, they will have a positive impact on those with mobility and visual impairments. There will be a neutral effect on those with other impairments.
- 8.13 It is intended to authorise gates under s147 of the Act at two field boundaries on Diversion 1, and at one field boundary on Diversion 2, to prevent the ingress and egress of animals. In contrast, in the event that the legal lines of the Existing Footpaths were to be re-opened, it would be necessary to authorise nine gates on Footpath 1, and four gates on Footpath 2. Authorising the gates on the Proposed Footpaths is therefore in keeping with the principles of 'Least Restrictive Access'.
- 8.14 There is no difference in gradient between the Proposed and Existing Footpaths.
- 8.15 It will be easier and indeed less costly to maintain the Proposed Footpaths as five additional bridges would require maintenance if the legal lines of the Existing Footpaths were re-opened instead.
- 8.16 The Proposed Footpaths will have a neutral impact on Safety.
- 8.17 The Proposed Footpaths will have a neutral impact on Status and Width.
- 8.18 The Proposed Footpaths will not remove public access from any feature of interest or place of resort, nor will it diminish the quality or diversity of any views.

8.19 It is considered that on balance the proposed diversions are 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 appears that the relevant statutory tests for making such a diversion Order have been met and that the proposal is in line with the Public Path Order Policy.

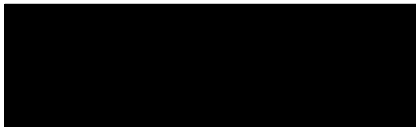
10.2 The Diversion Order would be in the interests of the landowner.

10.3 The Order should be made as proposed.

-----

**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 sections of Public Footpaths CL7/9 & CL7/10 as shown on Decision Plans 1 & 2 and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



Dated: 16/01/20.

Craig Jackson – Team Manager, Highways Maintenance and Drainage

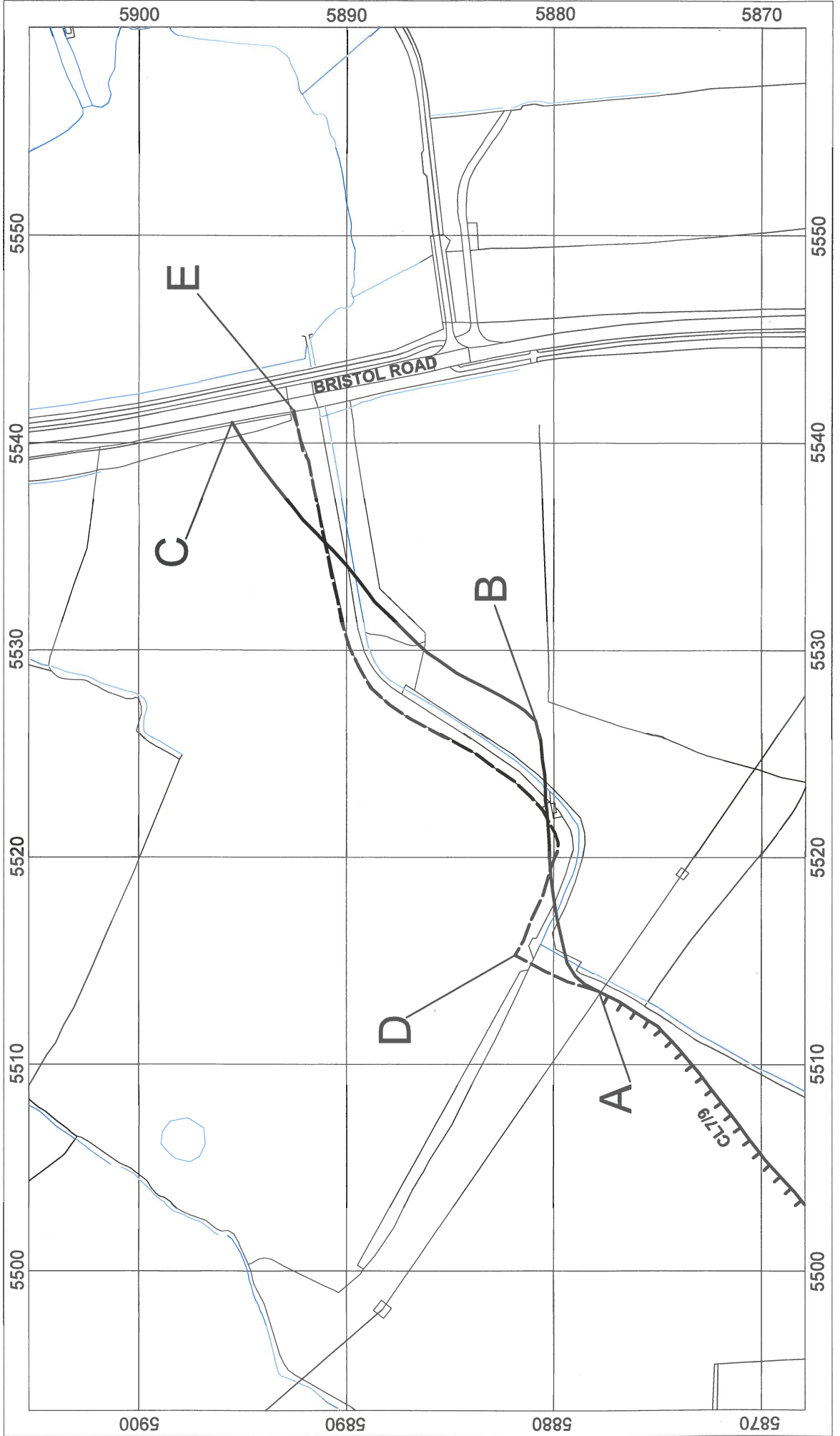
**Appendix 1 - Decision Plan  
Public Footpath CL7/9,  
Compton Martin**



Scale: 1:2500



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





**Appendix 2 - Decision Plan  
Public Footpath CL7/10,  
Compton Martin**

Public footpath to be added

F - - - J - - - H

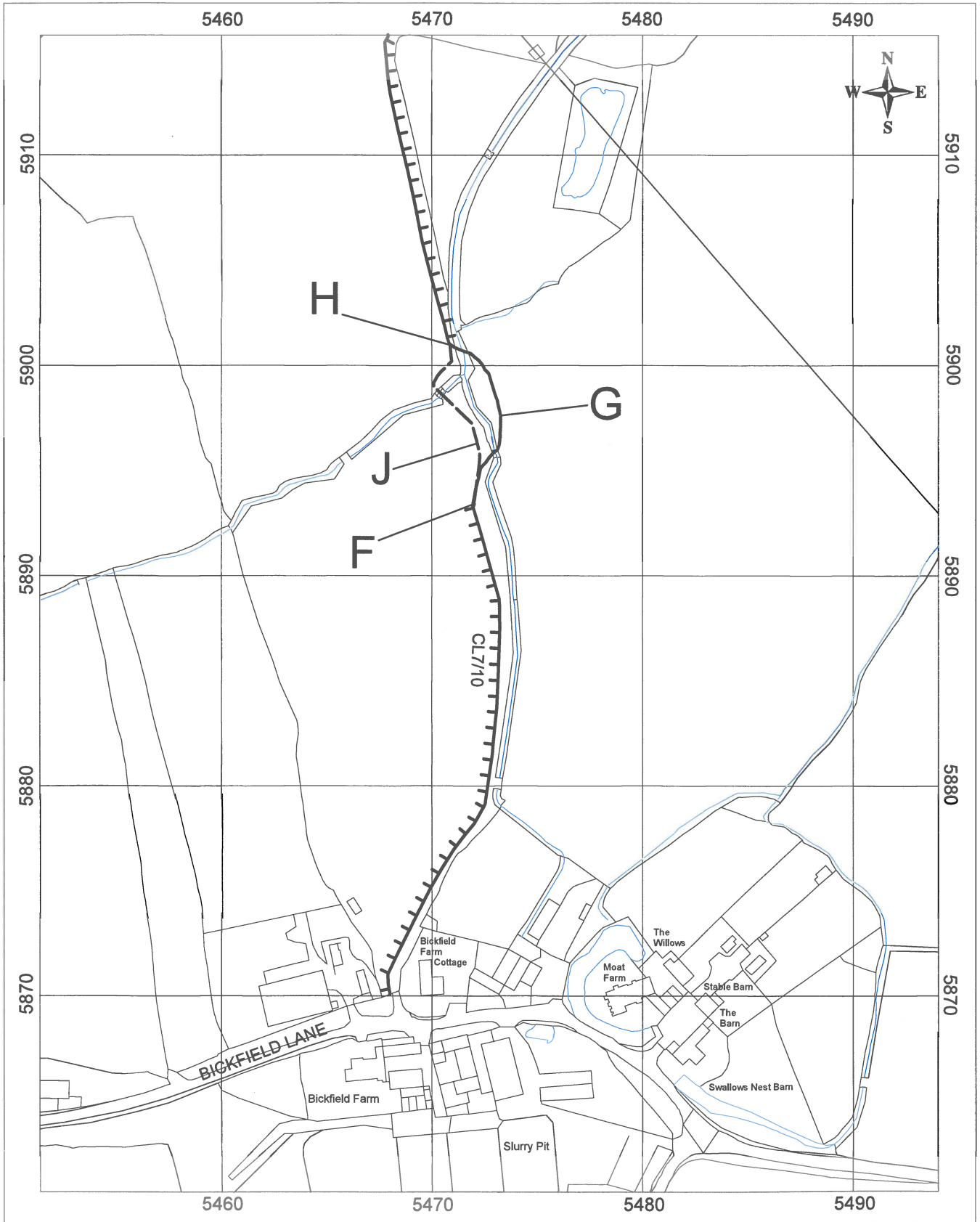
Unaffected public footpath

—————

Public footpath to be stopped up

F                      G                      H

Scale: 1:2500



## **APPENDIX 3 - DECISION SCHEDULE**

### **PART 1**

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

The full width of the section of Public Footpath CL7/9 commencing from grid reference ST 5513 5877 (point A on Decision Plan 1) and proceeding in a generally easterly direction for approximately 347 metres, via point B on Decision Plan 1, to a junction with the Bristol Road at grid reference ST 5541 5895 (point C on Decision Plan 1).

The full width of the section of Public Footpath CL7/10 commencing from grid reference ST 5472 5893 (point F on Decision Plan 2) and proceeding in a generally northerly direction, via point G on Decision Plan 2, for approximately 92 metres to grid reference ST 5470 5901 (point H on Decision Plan 2).

### **PART 2**

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

A section of public footpath commencing from grid reference ST 5513 5877 (point A on Decision Plan 1) and proceeding in a generally east north-easterly direction for approximately 362 metres, via point D, to a junction with the Bristol Road at grid reference ST 5541 5892 (point E on Decision Plan 1).

Width: 2 metres between grid references ST 5513 5877 (point A on Decision Plan 1) and ST 5541 5892 (point E on Decision Plan 1).

A section of public footpath commencing from grid reference ST 5472 5893 (point F on Decision Plan 2) and proceeding in a generally northerly direction for approximately 88 metres, via point J, to grid reference ST 5470 5901 (point H on Decision Plan 2).

Width: 2 metres between grid references ST 5472 5893 (point F on Decision Plan 2) and ST 5470 5901 (point H on Decision Plan 2).

### **PART 3**

#### **LIMITATIONS AND CONDITIONS**

None.