

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath CL18/21 in the Parish of Stanton Drew to move this section of the path away from a garden, a car park and an outbuilding.

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 CL18/21 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 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 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 - 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 Footpath CL18/21 is recorded on the Definitive Map and Statement which has a relevant date of 26 November 1956.
- 6.2 The Existing Footpath passes through the garden of the property Parsons Farm and the car park of The Carpenters Arms public house before entering an enclosure of land where a wooden outbuilding has obstructed the line of the path since its construction approximately 20 years ago. The proposed diversion would take the footpath away from these three locations/buildings by re-routing it along a private vehicular driveway which leaves the public road adjacent to the entrance to the pub's secondary car park.
- 6.3 **Description of the Existing Footpath**
The proposal is to divert the full width of the section of Public Footpath CL18/21 commencing from grid reference ST 6140 6205 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 151 metres to a junction with Wick Lane at grid reference ST 6155 6204 (point B on the Decision Plan), which would be stopped up. This route is referred to as the "Existing Footpath".
- 6.4 **Description of the Proposed Footpath**
The proposed new route commences from grid reference ST 6140 6205 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 86 metres to grid reference ST 6149 6206 (point C on the Decision Plan), and then turning in a generally south-easterly direction for approximately 48 metres to a junction with Wick Lane at grid reference ST 6152 6202 (point D on the Decision Plan). The width would be two metres throughout. This route is referred to as the "Proposed Footpath".
- 6.5 **Limitations and Conditions**
The Proposed Footpath will be created subject to the right of the landowner to erect and maintain a pedestrian gate at grid reference ST 6152 6202 (point E on the Decision Plan).

7. Consultations

- 7.1 The affected landowners, Stanton Drew Parish Council, national and local user groups, the Ward Councillors 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 the proposed diversion 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 and/or that they had no objections to the proposals.
- 7.3 No other comments were received in relation to the 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:** Full reinstatement of the Existing Footpath would involve the demolition of the wooden outbuilding on one landowner's land, together with the creation of a no parking-corridor in The Carpenters Arms' car park, restricting its patrons' use of the facility. With the Proposed Footpath avoiding both the said outbuilding and car park, as well as a section of the garden of a third landowner, it is considered expedient to divert the Existing Footpath in the interests of three different owners of land over which it passes; 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 Proposed Footpath starts at the same point as the Existing Footpath and finishes at a point on Wick Lane approximately 40 metres away from the point where the Existing Footpath meets that road. This is only a very short distance away from the continuation of the public rights of way network along public footpath CL18/26 (or the next section of public footpath CL18/21) and although the diversion would result in the public having to walk a further 40 metres along Wick Lane in order to access this other footpath, as it is a very quiet road with infrequent traffic this is not considered an inconvenience to the public. This test is therefore 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 the diverted route will be 17 metres shorter than the length of the existing route which is considered an insignificant decrease in the context of whole walks which people will undertake within the wider public rights of way network. Walking the route will be made easier due to the removal of four stile crossings, as well as the need to cross a car park. It therefore follows that the Proposed Footpath is not 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:** It is considered that the Proposed Footpath will be more enjoyable than the Existing Footpath for the public to walk: they will no longer need to cross a car park and there will be significantly less stiles or gates to negotiate. There is no difference between the Proposed and Existing Footpaths in terms of the views enjoyed; the start point is not altered and the finish point is only altered marginally. There will therefore be a positive effect on public enjoyment overall.
- 8.7 **Effect on other land served by the existing footpath and land affected by the proposed footpath:** Three separate landowners will benefit from the

removal of the Existing Footpath as the public right of way will no longer pass through their garden, car park or wooden outbuilding respectively. Similarly, as the Proposed Footpath will avoid buildings and the pub's car park, it will not have an adverse effect on that land.

- 8.8 **Effect on land affected by any proposed new path, taking into account the provision for compensation:** The first 44 metres of the Proposed Footpath from point A runs across agricultural land owned by a third party, in contrast to the first 13 metres of the Existing Footpath from the same point. At the date of this report, this third party has (despite being sent letters highlighting the proposed change) expressed no intention to claim compensation. In the event that they should subsequently express a desire 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.
- 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 31-metre increase of footpath on agricultural land outlined in paragraph 8.8 above – particularly as this is situated near the edge of the field in question - is not considered sufficient for there to be a negative effect on farming. There will be no effect on forestry as neither the Existing nor Proposed Footpath cross any woodland, nor will there be any adverse effect on biodiversity. There will be a positive effect on members of the public with mobility or visual impairments due to the removal of the four stile crossings and the need to no longer negotiate the pub's car park.
- 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 The Proposed Footpath starts at the same point as the Existing Footpath and finishes at a point approximately 40 metres away from the point where the Existing Footpath currently meets Wick Lane. With this only adding a very short distance to walk to the next public right of way leaving this road, the effect on connectivity is considered negligible.
- 8.12 For the reasons outlined in paragraph 8.9 above, the proposed diversion will have a positive effect on people with disabilities.
- 8.13 In line with government guidance and the principle of least restrictive access, the Authority will always seek to minimise the number of structures on, and at either end of, a new public right of way. In this instance, four stiles present on the Existing Footpaths would be replaced with just one Bristol Gate at point E on the Decision Plan. This is therefore in keeping with the Authority's Policy. Additionally, a fifth stile, currently present at point F on the Decision Plan, would be replaced with a kissing gate and authorised under Section 147 of the Act to prevent the ingress and egress of livestock that are kept in the field on the northern side of this boundary.
- 8.14 There is no difference in gradient between the Proposed and Existing Footpaths.
- 8.15 It is not considered that the Proposed Footpath will require any more maintenance than the Existing Footpath.

- 8.16 The Proposed Footpath will have a marginally positive impact on Safety due to the removal of the four stiles and walkers no longer needing to cross the car park of a well-frequented public house.
- 8.17 The Proposed Footpath will have a neutral impact on Status.
- 8.18 The Existing Footpath is considered 1.8 metres wide. The Proposed Footpath will be two metres wide.
- 8.19 The Proposed Footpath 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.
- 8.20 It is considered that on balance the proposed diversion is in accordance with the Policy.

9. Risk Management

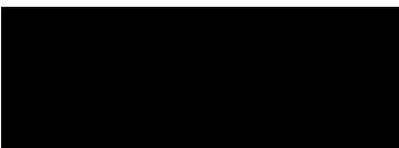
- 9.1 There are no significant risks associated with diverting the footpath.

10. Conclusion

- 10.1 It is considered that the relevant statutory tests for making a Diversion Order under Section 119 of the Act 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 owners of the land.
- 10.3 The Order should be made as proposed.

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 a section of Public Footpath CL18/21 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.

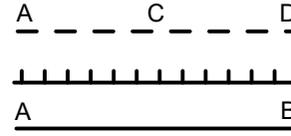


Dated: 21/04/2023

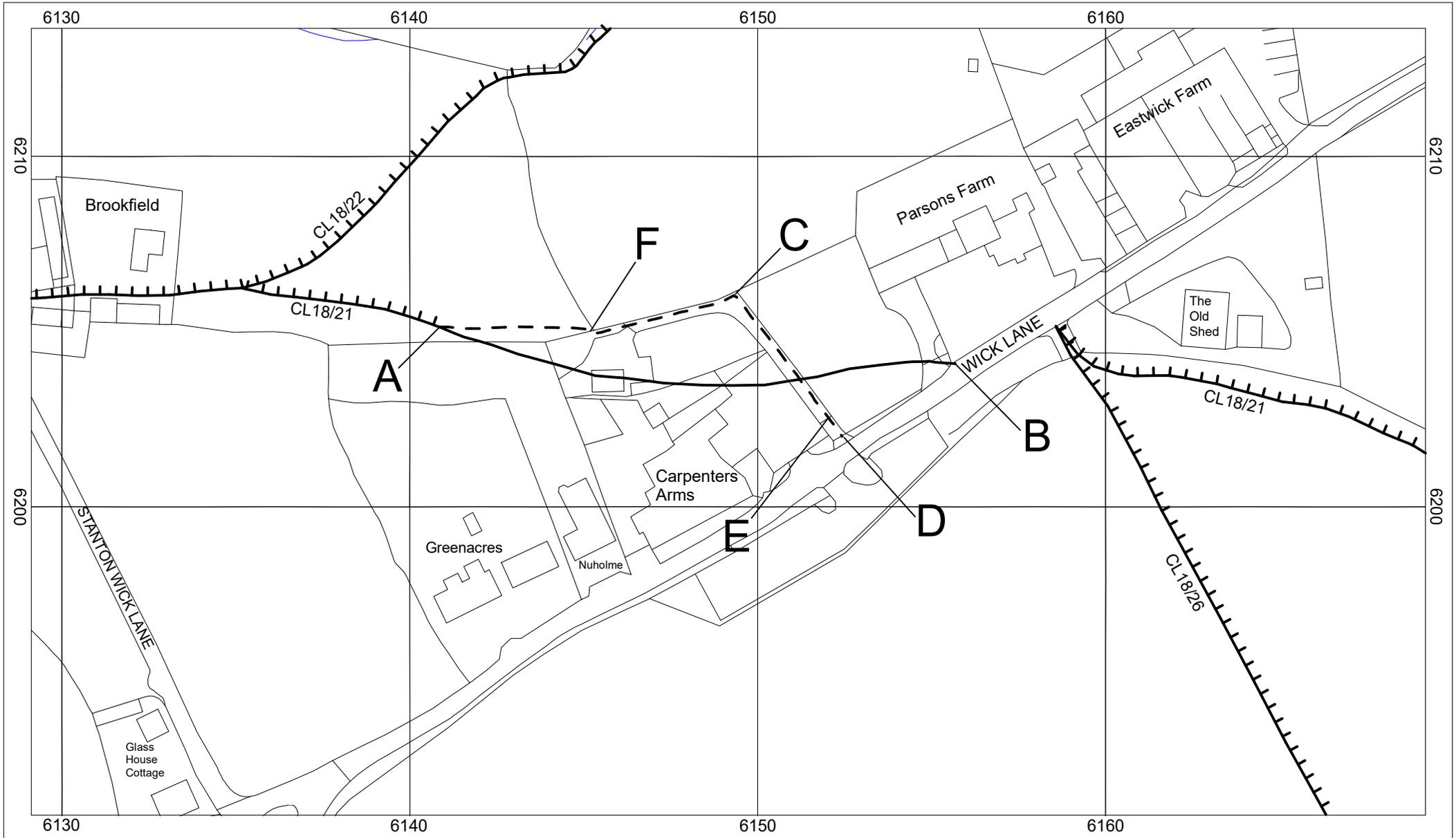
Craig Jackson – Team Manager, Highways Maintenance and Drainage

**Appendix 1 - Decision Plan
Public Footpath CL18/21,
Wick Lane, Stanton Wick**

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



Scale 1:1500



APPENDIX 2 - DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of Public Footpath CL18/21 commencing from grid reference ST 6140 6205 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 151 metres to a junction with Wick Lane at grid reference ST 6155 6204 (point B on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from grid reference ST 6140 6205 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 86 metres to grid reference ST 6149 6206 (point C on the Decision Plan), and then turning in a generally south-easterly direction for approximately 48 metres to a junction with Wick Lane at grid reference ST 6152 6202 (point D on the Decision Plan).

Width: 2 metres between grid references ST 6140 6205 (point A on the Decision Plan) and ST 6152 6202 (point D on the Decision Plan).

PART 3

LIMITATIONS AND CONDITIONS

The landowner shall have the right to erect and maintain a pedestrian gate at grid reference ST 6152 6202 (point E on the Decision Plan).