

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH BA5/22 AT
LANGRIDGE, PARISH OF CHARLCOMBE**

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath (FP) BA5/22 in Langridge in the parish of Charlcombe to divert the footpath away from the farm yard and over a steep bank in order to improve the management of the farm, as the routes will be directed away from the farm yard and machinery. The proposed route is over a less steep incline and allows greater views of the countryside to the east.

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 BA5/22 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 defray any compensation which becomes payable in consequence of the coming into force of the Order, pay the cost for processing an Order, the cost of any required notices in a local newspaper and for any 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 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 FP BA5/22 is recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956. The legal alignment has remained unchanged ever since.

6.2 The Existing Footpath currently runs through a field on a slope of the Cotswold Hills, in the middle of which is a farm yard which has been levelled. The footpath exits the yard via a steep bank back into the same field. An application has been made by the farm owner to divert the footpath around the contours of the area away from the farm yard so that the footpath remains within the field.

6.3 Description of the Existing Footpath

The proposal is to divert the full width of a section of FP BA5/22 commencing from grid reference ST 7286 6937 (point A on the Decision Plan) and proceeding in a generally west-northwesterly direction for approximately 178 metres to grid reference ST 7271 6946 (point C). This route is referred to as the "Existing Footpath".

6.4 Description of the Proposed Footpath

The proposed route commences from grid reference ST 7286 6937 (point A) and proceeding in a generally north-northeasterly direction for approximately 84 metres to grid reference ST 7290 6944 (point B) and turning in a generally westerly direction for approximately 203 metres to grid reference ST 7271 6946 (point C). The width will be 2 metres throughout. This route is referred to as the "Proposed Footpath".

6.5 Limitations and Conditions

No limitations or conditions are proposed. The Applicant intends to divide the field with a fence for farming purposes once the footpath has been diverted. A kissing gate will then be required for stock control purposes at the new field boundary at point B and this will be authorised under section 147 of the Act, to prevent the ingress and egress of animals.

7. Consultations

- 7.1 Affected landowners, Charlcombe Parish Council, national and local user groups, the Ward Councillors and statutory consultees were all consulted about the proposed diversion for a period of six 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.
- 7.3 Charlcombe Parish Council stated *“Councillors unanimously agreed that these changes were very sensible and that they should be supported”*.
- 7.4 The local Ramblers representative stated *“that Ramblers have no objections to the proposal”*.
- 7.5 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:** The Existing Footpath runs through a farm yard where animals and machinery are often kept. The Applicant as landowner has applied for the diversion to route the Existing Footpath away from the vicinity of the farm yard in order to improve management of the farm. 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 and finishes at the same point as the Existing Footpath. This 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. The length of the footpath is increased by approximately 109 metres. However, the total length of FP BA5/22 is currently approximately 758 metres, and to reach the next junction with bridleway BA5/52 a further approximately 115 metres of FP BA5/42 must be walked. A further 109 metres on top of approximately 873

metres is not considered substantially less convenient when the location of the Existing and Proposed Footpaths within the wider rights of way network is considered. The surface of the Proposed Footpath is similar to the Existing Footpath without having to traverse the farm yard and a steep bank. The area includes many footpaths crossing the Cotswold Hills and is close to the Cotswold Way long distance trail. The extra distance is such that any additional distance for the walker is likely to represent an insignificant increase in their overall walk. It is considered on balance that the Proposed Footpath is not substantially less convenient to the public; 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 Footpath removes the walker from the farm yard and provides improved views to the east. The Proposed Footpaths follows the contours of the land thereby removing the steep bank at point D. The effect on public enjoyment of the Proposed Footpath as a whole is therefore improved; this test should therefore be considered to have been met.
- 8.7 **Effect on other land served by the existing footpath and land affected by the proposed footpath:** The proposed diversion will not have an adverse effect on either land served by the Existing Footpath or land affected by the Proposed Footpath; this test should therefore be considered to have been met.
- 8.8 **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 Footpath with regard to compensation as the Applicant is the landowner of both the Existing and Proposed Footpaths. This test should therefore be considered to have been met.
- 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 changes are intended to improve farming processes by removing the walker from the farm yard where animals and machinery may be housed. The applicant intends to divide the field with a fence to improve farming processes further once the footpath has been diverted. It is considered that the proposal will not have an adverse effect on biodiversity or forestry. Path users with mobility and visual impairments will benefit from the reduction to the gradient of the Proposed Footpath and avoidance of the farm machinery or the close proximity to farm animals within the farm yard. The proposal does not have an adverse effect on members of the public with other disabilities. This test should therefore be considered to have been met.

- 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 proposal should have a positive impact on those with mobility and visual impairments because of the reduction to the gradient of the Proposed Footpath and avoidance of the farm machinery or the close proximity to farm animals within the farm yard. The proposed diversion has a neutral effect on those with other impairments.
- 8.12 It is intended to authorise a kissing gate under s147 of the Act at a new field boundary at point B to prevent the ingress and egress of animals. Authorising the gate would be in keeping with the principles of 'Least Restrictive Access'.
- 8.13 The Proposed Footpath is less steep than the Existing Footpath when exiting the farm yard. The Proposed Footpath will more closely follow the contours of the field.
- 8.14 The Proposed Footpath crosses a field which will have no adverse effect on maintenance.
- 8.15 The Existing Footpath runs through a farm yard which often houses machinery and farm animals. The Proposed Footpath removes the walker from the farm yard thereby improving safety for the walker.
- 8.16 The Proposed Footpath has a neutral impact on Connectivity, Status and Width.
- 8.17 The Proposed Footpath provides improved views to the east at point B.
- 8.18 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 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 owner.
- 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 a section of Public Footpath BA5/22 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



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Dated: 16/09/18.

Craig Jackson – Team Manager, Highways Maintenance and Drainage

**Appendix 1
Decision Plan
Public Footpath BA5/22
Langridge, Charlcombe**

Scale:1:2500



Public footpath to be created

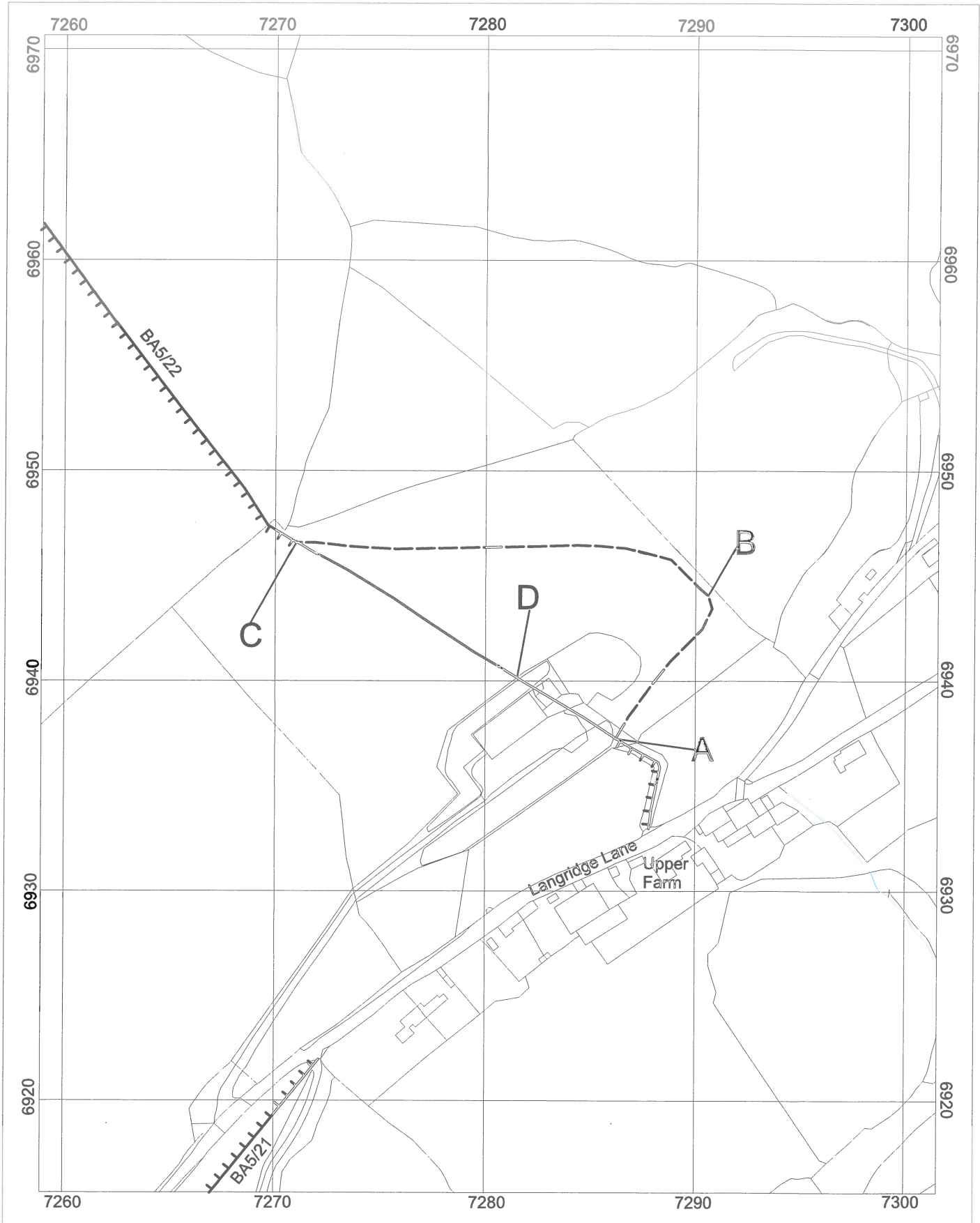
A — B — C

Unaffected public footpath

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Public footpath to be stopped up

A — D — C



DECISION SCHEDULE

Part 1

DESCRIPTION OF SITE OF EXISTING PATH

The full width of a section of Public Footpath BA5/22 commencing from grid reference ST 7286 6937 (point A on the Decision Plan) and proceeding in a generally west-northwesterly direction for approximately 178 metres to grid reference ST 7271 6946 (point C).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from grid reference ST 7286 6937 (point A) and proceeding in a generally north-northeasterly direction for approximately 84 metres to grid reference ST 7290 6944 (point B) and turning in a generally westerly direction for approximately 203 metres to grid reference ST 7271 6946 (point C).

Width: 2 metres between grid reference ST 7286 6937 (point A) and grid reference ST 7271 6946 (point C).

PART 3

LIMITATIONS AND CONDITIONS

None.

