



Statement of Grounds

in relation to the determination of the diversion order

Bath and North East Somerset Council
(Public Footpath BC16/1, Kelston Road, Newbridge)
Public Path Diversion Order 2022

25th January 2023

1. Background and Application

- 1.1 An application under the Highways Act 1980 (“the 1980 Act”) was made to Bath and North East Somerset Council (“the Authority”) to divert a section of Public Footpath BC16/1 at Kelston Road in the Ward of Newbridge, Bath away from a dangerous road crossing, a field used by minors for camping and an area in which horses graze. Public Footpath BC16/1 (“the FP”) was added to the Definitive Map and Statement by the Bath and North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No.4 – Newbridge) 2006 which took effect on 25 April 2007. The legal alignment has remained unchanged ever since.
- 1.2 The applicant, Bath Scouts (“the Scouts”), are the principal leaseholders of the land over which the FP runs (currently occupying the land under a 99-year lease). The existing line of the FP runs from the busy Kelston Road, through a field used by the Scouts for camping and then diagonally across a field in which horses are kept. The occupiers wish to divert the public to a safer crossing point of the Kelston Road; away from the camping field for safeguarding reasons; and along a fenced line in the horse field in order to keep horses and walkers separate, for safety reasons.
- 1.3 A pre-order consultation was held between 22nd October 2020 and 23rd November 2020. The pre-order consultation and responses from the Authority can be found at document OMA09.
- 1.4 A number of statutory undertakers stated that their plant would not be affected and/or that they had no objection to the proposed diversion.

1.5 Similarly, the local Ramblers representative stated that they had no objections.

1.6 Another member of the Bath Ramblers was in favour of diverting the western end of the footpath from point A to point D to provide a safer crossing of the Kelston Road and recommended that the new kissing gate at point D should be set back slightly into the field, with the boundary fencing adjusted appropriately to provide a safe refuge for people to stand whilst waiting to cross the road.

1.7 Two written objections were received during the pre-order consultation. These were considered carefully prior to the subsequent making of the order and written responses, explaining the Authority's decision, were then sent to these objectors, also addressing specifically the particular objections they had made. No such objector then repeated their objections during the formal consultation period which followed subsequently (see paragraph 1.12 below).

1.8 After the pre-order consultation period, a written works agreement was drawn up between the applicant and the Authority and signed, providing for the construction of:

- A recessed fenced area at point D to provide a safe refuge for walkers following the crossing of Kelston Road;
- A 3.6 metre vehicular bridge crossing the stream at point F;
- A fence running parallel to the proposed new line of the footpath between points L & C, to keep walkers and horses separate;

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- A four-metre by four-metre area of hardcore at point K – i.e. the point where the horses would exit their stabled area and cross the proposed new line.

1.9 The public path diversion order was made under section 119 of the 1980 Act on 7th July 2022.

1.10 **Description of Public Footpath to be stopped up.** The full width of the section of Public Footpath BC16/1 commencing from grid reference ST 7151 6628 (point A on the Order Map) and proceeding in a generally easterly direction for approximately 181 metres to grid reference ST 7169 6629 (point B on the Order Map), and then turning in a generally east south-easterly direction for approximately 217 metres to grid reference ST 7190 6625 (point C on the Order Map) (referred to as “the Existing FP”).

1.11 **Description of the Footpath to be created.** A section of public footpath commencing from grid reference ST 7153 6624 (point D on the Order Map) and proceeding in a generally northerly direction for approximately 43 metres to grid reference ST 7153 6628 (point E on the Order Map) and then turning in a generally north-easterly direction for approximately 18 metres to a bridge at grid reference ST 7154 6629 (point F on the Order Map) and then continuing in a generally north-easterly direction for approximately 12 metres to grid reference ST 7155 6631 (point G on the Order Map) and then turning in a generally easterly direction for approximately 55 metres to grid reference ST 7160 6630 (point H on the Order Map) and then turning in a generally north north-easterly direction for approximately 40 metres to grid reference ST 7162 6633 (point J on the Order Map) and then turning in a generally east

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south-easterly direction for approximately 283 metres to grid reference ST 7188 6621 (point K on the Order Map) and then turning in a generally north-easterly direction for approximately 42 metres to grid reference ST 7190 6625 (point C on the Order Map) (referred to as “the Proposed FP”). The Proposed FP will be 2 metres wide between grid references ST 7153 6624 (point D on the Order Map) and ST 7174 6628 (point L on the Order Map); and 3 metres wide between grid references ST 7174 6628 (point L on the Order Map) and ST 7190 6625 (point C on the Order Map). It will be created without any limitations or conditions.

1.12 The making of the Order was advertised from 14th July 2022 until 11th August 2022. A total of four letters/emails were received regarding the Order: three were from statutory undertakers stating that they had no objection to the order and/or that their plant was not affected; the remaining e-mail was from a member of the public, Mr Guy Hodgson, raising no objection to the part of the diversion running from point D to point L, but objecting to the proposed diversion between points L and C. These representations/objections to the Order can be found at OMA04 and the Authority’s comments on the objections can be found at OMA05.

1.13 An e-mail was sent to Mr Hodgson explaining the basis upon which the applicant was seeking the diversion between points L and C (namely following an incident in which a walker’s dog had chased a horse causing it to collide with barbed wire and require euthanasia). However, Mr Hodgson maintained his objection.

1.14 The Authority therefore considered whether to proceed with the Order and send it to the Secretary of State for Environment, Food & Rural Affairs for determination or whether to not proceed with the Order. The Authority decided on 21st October 2022 to refer the Order to the Secretary of State for Environment, Food & Rural Affairs for determination and to support confirmation of the Order.

2. Legal Framework

2.1 The Authority has a discretionary power to make Public Path Orders. When considering the application for a Public Path Order, the Authority considers whether the proposals meet the requirements set out in the legislation (which are reproduced below). In deciding whether to make an Order or not, the Authority considers both the tests for making the Order and for confirming the Order (*R. (Hargrave) v. Stroud District Council* [2002]). The Authority also considers using its discretion not to make the Order (*R. (Hockerill College) v. Hertfordshire County Council* [2008]).

2.2 Before making an Order under section 119 of the 1980 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.

2.3 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.

2.4 Before confirming an Order, the Authority or the Secretary of State must be satisfied that:

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- the diversion is expedient in the interests of the owner, lessee or occupier of the land crossed by the path or way, or in the interests of the public;
- the path will not be substantially less convenient to the public as a consequence of the diversion; and
- it is expedient to confirm the Order having regard to:
 - the effect which the diversion would have on public enjoyment of the path as a whole;
 - the effect which the coming into operation of the order would have on other land served by the existing public right of way; and the effect which any new public right of way created by the order would have on the land over which the right is created and any land held with it, taking into account the provisions for compensation in the 1980 Act.

2.5 In determining whether or not to confirm a public path diversion order, the Authority or Secretary of State must also have regard to:

- the needs of agriculture (including the breeding or keeping of horses) and forestry;
- the desirability of conserving flora, fauna and geological and physiographical features;
- the effect the path would have on members of the public with protected characteristics under the Equality Act 2010; and
- any material provision of any rights of way improvement plan relating to the land affected by the diversion.

2.6 In addition to the legislative tests detailed above, the Authority also considered the proposals 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. The criteria are: Connectivity, Equalities Impact, Gaps and Gates, Gradients, Maintenance, Safety, Status, Width, Features of Interest.

2.7 The Authority has declared a Climate Emergency and has also considered the effect on Climate Change.

Consideration of the Legal Framework and Criteria

3.1 Before making an Order under section 119 of the 1980 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:

3.2 The Existing FP runs through a field which the lessees, the Scouts, use for camping. Further east (between points G & C) the path then runs through a field which is used to graze horses.

3.3 The Proposed FP will divert walkers around the camping field and therefore away from the minors which use it; this is therefore in the lessee's interests for safeguarding reasons.

3.4 Further east, the fenced footpath described in paragraph 1.8 above will keep walkers (and where applicable their dogs) separate from the horses; this is

therefore in the lessee's interests from the point of view of the horses' welfare (particularly in view of the recent incident outlined in paragraph 1.13 above)¹.

3.5 For these reasons, it is expedient to divert the path in the interests of the lessees of the land crossed by it.

3.6 **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.**

3.7 The Proposed FP starts approximately 50 metres further down Kelston Road than the Existing FP (the termination point at the footpath's other end remains unchanged). The new starting point lies directly opposite the northern entrance to public footpath BC16/2 where the sightlines for crossing the Kelston Road are better. Consequently, the Authority considers the starting point of the Proposed FP *more* convenient to the public than the starting point of the Existing FP.

3.8 **The path must not be substantially less convenient to the public as a consequence of the diversion:**

3.9 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 95 metres longer than the length of the existing route. However, it is likely that this path will form part of a longer route for walkers so this 95-

¹ The objector, Mr Hodgson, has expressed the view that the grazing horses are quite comfortable with walkers. However it is the Authority's view that the September 2019 incident resulting in the horse fatality, outlined in paragraph 1.13 above, indicates that this is not always the case.

metre increase is unlikely to be significant in the context of whole walks which people will undertake.

3.10 Neither is it considered that the difficulty of the walking will change substantially. The new road crossing at point D will be safer and easier than the current one at point A. In terms of the horse field, although the incline along the proposed 42-metre long section between points K & C is steeper than the incline of the existing 169-metre long cross-field section between points L & C, the proposed 157-metre long section between points L & K would be a level stretch and the K to C slope which would then follow is certainly not so steep as to make the construction of steps a consideration. For these reasons the overall increase in steepness in the horse field is considered *slight* rather than substantial. It therefore follows that the Proposed FP is not substantially less convenient to the public.

3.11 The Authority must also give due regard to the effect the diversion will have on the needs of agriculture (including the breeding or keeping of horses) and forestry, the desirability of conserving flora, fauna and geological and physiographical features and the effect the path would have on members of the public with protected characteristics under the Equality Act 2010.

3.12 Needs of Agriculture (including the breeding or keeping of horses) and Forestry – In separating the public (and their dogs) from the horses that graze in the eastern field, the Proposed FP will have a positive effect on the keeping of horses. A clump of hazel trees will be cleared at Point F to allow a bridge to be sited in that location which will have a minor impact on forestry

(see paragraph 1.8 above). However, the applicant advises that over the course of the past year they have planted 75 trees within the site as a whole and are set to plant 550 further trees before the coming Spring – a project they consider will more than redress the ecological balance affected by the removal of the hazel trees.

3.13 Conserving flora, fauna and geological and physiographical features -

In terms of flora and fauna, the diversion will include a limited amount of vegetation clearance between points E & G. However, as the area in question has no specific diversity designation it is considered that the effect of this clearance on biodiversity will be negligible.

3.14 There will be no effect on any geological or physiographical features.

3.15 The effect the path would have on members of the public with protected

characteristics under the Equality Act 2010 – The safer road crossing at point D would have a positive effect on members of the public with impaired mobility. In separating the public from the horses that graze in the eastern field the Proposed FP would have a positive effect on members of the public with visual disabilities.

3.16 Before confirming an Order, the Authority or the Secretary of State

must be satisfied that the diversion is expedient in the interests of the owner, lessee or occupier of the land crossed by the path or way, or in the interests of the public: this has been considered in paragraphs 3.1 – 3.5 above.

3.17 Before confirming an Order, the Authority or Inspector must also be satisfied that the path will not be substantially less convenient to the public as a consequence of the diversion: this has been considered in paragraphs 3.9 & 3.10 above.

3.18 It must be expedient to confirm the Order having regard to the effect the diversion will have on public enjoyment of the path as a whole; the effect which the coming into operation of the order would have on other land served by the existing footpath; and the effect which any new public right of way created by the order would have on the land over which the right is created and any land held with it, taking into account the provisions for compensation in the 1980 Act.

3.19 Public enjoyment of the Path as a whole: The Proposed FP will run through a small area of woodland (between points E & G) and cross a small stream (at point F). As the equivalent section of the Existing FP simply traverses fields, this particular section of the proposed diversion could be viewed as creating a more varied route compared with the current one. As regards the Proposed FP between points L & C, it is submitted that walkers will still be able to view the grazing horses at relatively close quarters; they will merely be physically separated from them, for the safety reasons already outlined.

3.20 The objector, Mr Hodgson, has raised concerns that public enjoyment will be diminished by people being “contained” into narrow strips between two lines of fencing. However this ceased to be a concern to the authority when the applicant agreed to a legal width of three metres between points L & C (with

the new fencing to be constructed on the left-hand side of where the wooden stile is currently situated at point L, when one enters the field from the west). Additionally, the fence running along the southern boundary of the field will remain in its current position with the effect that the two lines of fencing will be at least five metres apart. At such a width, it is not considered that people will feel hemmed in. The Authority is also mindful that there is nothing in law preventing the applicant from fencing either side of the existing footpath through the field. If this were to be done then there would be a walkable strip of just 1.8 metres in width, in contrast to the wider footpath through this field which the diversion would create.

3.21 Effect which the coming into operation of the order would have as respects other land served by the existing footpath; and the effect which any new public right of way created by the order would have on the land over which the right is created and any land held with it: The land will benefit from the removal of the Existing FP from its camping field and the Proposed FP will instead enter a wooded area, crossing a small stream (point F) before following the boundary of the two fields to the north. The applicant has agreed to clear a two metre-wide path through the wooded area between points E & G, and to put in a 3.6 metre-wide vehicular bridge at the stream crossing (see paragraph 1.8 above). (It is understood that the bridge will be predominantly for use by walkers and only occasional vehicular use).

3.22 At its eastern end, the Proposed FP will run along the southern and eastern field boundaries, in contrast to the Existing FP which runs across the middle of the field. Immediately south of this field is a yard in which horses are

stabled, the gated entrance to which lies in the field's south-eastern corner (point K). In the absence of any groundworks in this corner, it is likely that a combination of walkers' footfall and the passage of horses passing between the yard and the grazing field would result in the footpath surface becoming badly poached and difficult/unpleasant to traverse. The applicant has agreed to lay a four-metre by four-metre area of porous DOE Type 2 stone in this corner, reinforced with geotextile, to prevent the ground from deteriorating in this way (again, see paragraph 1.8 above).

3.23 With the aforementioned vegetation clearance, bridge and surface works carried out to the Authority's satisfaction, it is not considered that the proposed diversion will have an adverse effect, either on land served by the Existing FP, or on land affected by the Proposed FP.

3.24 **Considering the Provisions for Compensation in the 1980 Act:** There will be no compensation payable as a result of the Proposed FP coming into existence because all of the land which it runs across is occupied/owned by the same parties that the Existing FP runs across.

3.25 **Before confirming an order, the Secretary of State must also have regard to the contents of any material provision of any rights of way improvement plan relating to the land affected by the diversion.** It is considered that the proposal will contribute towards the Authority achieving the following actions identified in its Public Rights of Way Improvement Plan's Statement of Actions:

- Action 4.2 – *"Identify and carry out improvements for people with mobility difficulties and visual impairments"*. Changing the road crossing from point

A to point D, and separating the public from horses between points L and C, will both improve safety for people with mobility difficulties and visual impairments;

- Action 4.3 – *“Identify low maintenance gaps in the wider recreational network that will improve accessibility and connectivity”*: Replacing the wooden stile at point L with a metal kissing gate will improve accessibility. Changing the road crossing point from point A to point D will improve connectivity. The metal kissing gate will be longer lasting than the wooden stile currently in situ and will require less maintenance. A low-maintenance metal kissing gate will similarly be installed in the two-metre by two-metre safe area at point D, described in paragraph 1.8 above;
- Action 4.4 – *“Seek improvements of the network associated with development and funded by third parties”*: The aforementioned two-metre by two-metre safe area will be funded by the Scouts, as will the vehicular bridge crossing the stream at point F (through the new wooded section of the Proposed Footpath which will in itself provide new features of interest to the route walked).

3.26 **Consideration of the Authority’s adopted Public Path Order Policy:**

3.27 **Connectivity:** The Proposed FP starts approximately 50 metres further along Kelston Road as the Existing FP but (unlike the Existing FP) directly opposite the northern entrance to public footpath BC16/2 (see paragraph 3.7 above). The diversion would therefore improve the connectivity of the public rights of way network.

3.28 **Equalities Impact:** This has been discussed in paragraph 3.15 above. A positive impact is anticipated, for the reasons stated there.

3.29 **Gaps and Gates:** As the Proposed FP would contain one less gate and one less stile than the Existing FP, it is in keeping with the Authority's principles of "Least Restrictive Access". The new gates would be authorised under Section 147 of the 1980 Act and would not be limitations.

3.30 **Gradients:** The respective gradients of the Proposed and Existing FP's have been discussed in paragraph 3.10 above. It is considered that the 42-metre long steeper section between points K & C on the Proposed FP would be mitigated by the 157-long flat section immediately preceding it.

3.31 **Maintenance:** Maintenance of the Proposed FP will be similar to the maintenance of the Existing FP. The vehicular footbridge on the Proposed FP at point F will be the maintenance responsibility of the occupiers primarily (to be established by way of a Maintenance Deed), but with the Authority retaining a statutory duty to provide and maintain a footbridge in that location.

3.32 The objector, Mr Hodgson, has raised concern that the diverted route will be more difficult to maintain than the existing one. These concerns appear to be at least partly linked to the concerns he has raised about fencing (see paragraph 3.20 above). In particular, Mr Hodgson comments that fenced strips become overgrown with nettles in summer and reduced to muddy bogs in the winter. It is the Authority's experience however, that the frequent passage of feet on well-used footpaths has a significant effect in terms of suppressing vegetation growth, even during the warmer months of the year. It is also considered that (if necessary, despite the frequent passage of feet)

the new walkable strip of at least three metres would be easier to mow/trim compared with, for example, the current 1.8-metre footpath if this were to be fenced on both sides in the future.

3.33 In terms of Mr Hodgson's concerns about the muddy surface of the diverted route, the Authority similarly considers that the greater width of the new footpath will result in a more diffuse distribution of footfall compared with the narrower width of the current route through the field in question (again, particularly if the current route was subsequently to be fenced on either side). The one exception to this is likely to be at point K on the Order Plan which will serve as a crossing point from the yard (immediately to the south) in which the horses are stabled and the portion of the field, north of the new fence described in paragraph 3.20 above. To address the Authority's concerns that the additional impact of horse's hooves in this corner will result in the footpath surface becoming badly poached and difficult/unpleasant to traverse, the applicant has agreed to lay a four-metre by four-metre area of porous DOE Type 2 in this corner, reinforced with geotextile, to prevent the ground from deteriorating in this way.

3.34 **Safety:** The safety of both horses and walkers will be improved by the fenced line running parallel to points L-K-C keeping them separate from each other (see paragraph 1.8 above).

3.35 **Status:** The Proposed FP does not have any impact on status.

3.36 **Width:** The Existing FP is two metres wide along its entire length; the Proposed FP would be two metres wide between points D & L and then three metres wide between points L & C.

3.37 **Features of Interest:** The Proposed FP 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. It is considered that both the stream crossing at point F and the wooded area in the same vicinity will be added features of interest.

3.38 On balance the proposed diversion is in accordance with the Authority's Adopted Path Order Policy.

3.39 **The Authority will consider the effect on Climate Change:** Public rights of way are a key resource for shifting to low-carbon, sustainable means of transport. The proposals are part of the ongoing management of the network and therefore contribute towards helping to tackle the Climate Emergency.

4. Conclusion

4.1 It is submitted that the relevant statutory tests for confirming the public path diversion order have been met and that the proposal is in compliance with the Authority's Adopted Public Path Order Policy.

4.2 The Authority further submits that the objector has not raised any grounds upon which the Order should not be confirmed.

4.3 Accordingly the Authority respectfully requests that the Inspector confirms the public path diversion order, without modification.