

1. The Issue

- 1.1 An application has been made to divert sections of public footpaths BA27/19 and BA27/20 in the vicinity of River Terrace and Memorial Park, Keynsham. The application has been made because development which was carried out in the 1970's has made the definitive lines unavailable for use. Further development is currently being carried out and the landowner wishes to align the definitive rights of way with routes that are already laid out and used by the public. A new set of steps is also proposed.
- 1.2 The decision to make a Diversion Order was made by the Team Manager – Highways Maintenance and Drainage on 17th October 2018 (“the Original Decision”) and a Diversion Order was made on 15th November 2018 (“the Original Order” attached at Appendix 3). It has subsequently come to light that in the Original Decision the wrong set of steps was described as Proposed FP 4 and the description and Map were therefore not correct in the Original Decision or the Original Order. A decision is therefore required:
- a) to not proceed with confirmation and to abandon the Original Order; and
 - b) to make a new Diversion Order which accurately shows the Proposed FPs in the descriptions and maps.

2. Recommendation

- 2.1 That the Team Manager - Highways Maintenance and Drainage agrees that the Public Path Diversion Order sealed on 15th November 2018 is not confirmed and is abandoned and grants authorisation for a new Public Path Diversion Order to be made to divert a section of Public Footpath BA27/19 and Public Footpath BA27/20 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 and the cost of any required notices in a local newspaper. Should an Order be made and confirmed, the Proposed Footpaths will become maintainable at public expense.
- 3.2 A decision not to confirm the Original Order must be notified to every person on whom a copy of the notice of the making of the Original Order was served.

- 3.3 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, members of the public with protected characteristics under the Equality Act 2010 and any material provisions of the Joint Rights of Way Improvement Plan.

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 (FPs) BA27/19 and BA27/20 are recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956. New routes were provided when development took place in the 1970's. However, the FPs were not diverted onto these alternative routes at that time. A walkway agreement was made between The County Council of Avon and Wansdyke District Council on 23rd September 1986 at River Terrace dedicating as a footpath the area shown as 'unnumbered footpaths' on the Decision Plan. This is not affected by this application although Proposed FP 3 has a junction with the walkway at point R on the Decision Plan.

6.2 A decision to make the Original Order was made on 17th October 2018 and the Bath and North East Somerset Council (Public Footpaths BA27/19 and BA27/20, River Terrace and Memorial Park, Keynsham) Public Path Diversion Order 2018 was made on 15th November 2018.

After the initial advertising of the Original Order it came to light that there was an error in the description and on the Original Order Map for the route of the proposed FP from the walkway between point R and point S on the Original Order Map. A decision is therefore required to not confirm the Original Order and to abandon it. It is considered that the consultation information was close enough to the intended route that the consultation is valid although the description and map on the replacement Diversion Order will vary slightly to the Consultation Map. All of the local consultees are aware of the intended route and have been informed of the requirement that a decision to abandon the Original Order and make a replacement order is needed.

6.3 The diversions are proposed in the interest of the landowner in order to align the recorded FPs with the routes actually walked by the public as a result of previous development and via a new set of steps as a result of new development.

6.4 **Description of the Routes to be Diverted**

The full width of the section of FP BA27/19 commencing from a junction with FP BA27/20 at grid reference ST 6554 6840 (point A) and proceeding in a generally southeasterly direction for approximately 78 metres to a junction with FP BA27/19 at grid reference ST 6559 6834 (point B) (referred to as "Existing FP 1").

6.5 The full width of the section of FP BA27/20 commencing from a junction with FP BA27/19 at grid reference ST 6554 6840 (point A on the Decision Plan) and proceeding in a generally southerly direction for approximately 47 metres to a junction with unnumbered FP at River Terrace at grid reference ST 6554 6835 (point C) (referred to as "Existing FP 2").

6.6 The full width of the section of FP BA27/20 commencing from a junction with unnumbered FP at River Terrace at grid reference ST 6555 6833 (point D) and proceeding in a generally south-southeasterly direction for approximately 175 metres to a junction with FP BA27/19 at grid reference ST 6559 6816 (point E) (referred to as "Existing FP 3").

6.7 The full width of the section of FP BA27/19 commencing from grid reference ST 6563 6823 (point F) and proceeding in a generally south-southeasterly direction for approximately 58 metres to a junction with FP BA27/19 at grid reference ST 6564 6817 (point G) (referred to as "Existing FP 4").

6.8 These routes are referred to collectively as the "Existing FPs".

6.9 **Description of the Proposed Footpaths**

A section of FP commencing from a junction with FP BA27/74 at grid reference ST 6553 6842 (point H on the Decision Plan) and proceeding in a generally east-northeasterly direction for approximately 4 metres to grid reference ST 6554 6842 (point J) and turning in a generally

southerly direction for approximately 35 metres to a junction with a new FP at grid reference ST 6555 6839 (point K) and turning in a generally west-southwesterly direction for approximately 1 metre to a junction with unnumbered FP at River Terrace at grid reference ST 6554 6839 (point L) Width: 2 metres between grid reference ST 6553 6842 (point H) and grid reference ST 6554 6839 (point L) (referred to as "Proposed FP 1").

- 6.10 A section of public footpath commencing from a junction with a new FP at grid reference ST 6555 6839 (point K) and proceeding in a generally northeasterly direction for approximately 9 metres to grid reference ST 6555 6839 (point M) and turning in a generally easterly direction via steps for approximately 9 metres to grid reference ST 6556 6839 (point N) and turning in a generally southerly direction via steps for approximately 16 metres to grid reference ST 6557 6838 (point P) and turning in a generally northeasterly direction for approximately 42 metres to a junction with FP BA27/19 at grid reference ST 6560 6839 (point Q). Width: 1.1 metres between grid reference ST 6555 6839 (point K) and grid reference ST 6556 6839 (point N); 1.2 metres between ST 6556 6839 (point N) and ST 6557 6838 (point P); 3.5 metres between grid reference ST 6557 6838 (point P) and grid reference ST 6560 6839 (point Q) (referred to as "Proposed FP 2").
- 6.11 A section of FP commencing from a junction with the unnumbered FP at River Terrace at grid reference ST 6556 6834 (point R) and proceeding via steps in a generally south-southeasterly direction for approximately 16 metres to grid reference ST 6556 6832 (point S) and turning in a generally northerly direction for approximately 13 metres to grid reference ST 6556 6834 (point T) and turning in a generally easterly direction for approximately 14 metres to grid reference ST 6558 6834 (point U) and turning in a generally southerly direction for approximately 191 metres to a junction with FP BA27/19 at grid reference ST 6559 6816 (point V). Width: 1.8 metres between grid reference ST 6556 6834 (point R) and grid reference ST 6556 6832 (point S); 2 metres between grid reference ST 6556 6832 (point S) and grid reference ST 6556 6834 (point T); Graduating at a constant rate from 2 metres at grid reference ST 6556 6834 (point T) to 3.5 metres at grid reference ST 6558 6834 (point U); 2 metres between grid reference ST 6558 6834 (point U) and grid reference ST 6559 6816 (point V) (referred to as "Proposed FP 3").
- 6.12 A section of FP commencing from grid reference ST 6563 6823 (point F) and proceeding in a generally southerly direction for approximately 58 metres to a junction with FP BA27/19 at grid reference ST 6563 6817 (point W). Width: 2 metres between grid reference ST 6563 6823 (point F) and grid reference ST 6563 6817 (point W) (referred to as "Proposed FP 4").
- 6.13 These routes are referred to collectively as the "Proposed FPs".

- 6.14 **Limitations and Conditions** - The Proposed FPs will be created without any limitations or conditions.

7. Consultations

- 7.1 Affected landowners and occupiers, managing agents acting for affected Residential Associations, Keynsham Town Council, national and local user groups, the Ward Councillors, the Authority's Parking Services and statutory undertakers were all consulted about the proposed diversion for a period of six weeks ("the Original Consultation Period"). Additionally site notices were erected at either end of the sections of the Existing FPs and at either end of the sections of the 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. Wales and West Utilities Ltd and Virgin Media identified plant in the area but have no objections to the proposal. It is therefore proposed to preserve any rights held by these two utilities when the order is made.
- 7.3 No other comments were received in relation to these proposals during the Original Consultation Period.
- 7.4 Once the Original Order had been made and advertised it came to light that an incorrect description and Order Map had been used in the Original Order.

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 FPs currently run through buildings which have been in existence for many years. Diverting the Existing FPs onto the routes previously provided will avoid the landowners having to reinstate the obstructed routes. Proposed FP 3 enables the public to walk from one ground level to another via a new set of steps provided by the landowner as a result of new development. 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:** Proposed FPs 1 and 2 together will join with FP BA27/74, unnumbered FP/walkway at River Terrace, and another point on FP BA27/19 at point P providing an improved and more convenient connection to the footpath network. Existing FP 3 and Proposed FP3 both start at junctions with unnumbered FP/walkway at River Terrace and finish at junctions with

FP BA27/19, proposed FP3 being substantially as convenient to the public. Proposed FP 4 starts at the same point as Existing FP 4 and finishes on the same path at a junction with FP BA27/19 which is substantially as convenient to the public. 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:** The Existing FPs run over and along the steep banks of the valley through which the River Chew runs. The Proposed FPs follow similar topography and for similar lengths. Proposed FP 1 provides a link to FP BA27/74 and Proposed FP 3 provides a link to FP BA27/19 at point Q further to the north providing improved connectivity. The Proposed FPs do not adversely affect the destination of any walkers. This part of the 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 Paths:** The Existing and Proposed FPs run over similar topography. Proposed FP 3 will move from one level to another via improved steps and then run through parkland rather than through residential land thereby increasing public enjoyment. The Proposed FPs do not have any adverse effect on public enjoyment; 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 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.
- 8.8 **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 FPs with regard to compensation. All landowners are in agreement with the proposals and the Proposed FPs are all on land owned by the Applicant; this test is therefore 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 protected characteristics:** Existing FP 1 currently runs through buildings and over a steep bank. Proposed FP 1 is already tarmacked and available to the public. Existing FP 2 currently runs through buildings and is being diverted on Proposed FP 2 down steps and is already in use by the public. Existing FP 3 currently runs through buildings and is being diverted on Proposed FP 3, most of which is already in existence and being used by the public with the addition of improved steps. Existing FP 4 currently runs over grass

which is prone to flooding. Diverting the route to Proposed FP 4 on a slightly raised level and which is already tarmacked will avoid the public having to walk on poorly drained land. The diversions will have no effect on farming and forestry and may improve biodiversity as walkers will be on surfaced paths. Path users with mobility and sight impairments may have difficulty with steps but the steepness of the bank cannot be avoided and they should find the improved surfaces of the Proposed FPs and steps more amenable to use.

- 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:** Connectivity is improved by Proposed FP 1 providing a link to FP BA27/74. Proposed FP 2 provides an improved link to walkers heading north along FP BA27/19 from point Q. Proposed FPs 3 and 4 have a neutral effect on connectivity.
- 8.11 The improved surfaces of the Proposed FPs and provision of improved steps will aid the safety of all walkers. Path users with mobility or visual impairments are likely to find the Proposed FPs more commodious to use because they route the walker away from land prone to flooding and provide improved surfaces as surfaced paths are easier for path users with mobility and visual impairments to use. The steepness of the bank cannot be avoided but the provision of steps with handrails on Proposed FPs 2 and 3 will assist path users with mobility and visual impairments.
- 8.12 Maintenance of the Proposed FPs should be improved by the use of made up surfaces.
- 8.13 The width of the Proposed FPs varies from 1.1 metres to 3.5 metres. The narrow sections are as a result of the necessity to use steps because of the steepness of the bank.
- 8.14 The Proposed FPs do not have any impact on gaps and gates or status.
- 8.15 Proposed FPs 2 and 3 run through the parkland rather than through buildings and residential land therefore providing improved features of interest.
- 8.16 It is considered that on balance the proposed diversions are 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 proposals are part of the ongoing management of the network and therefore contribute towards helping to tackle the Climate Emergency.

10. Risk Management

10.1 There are no significant risks associated with diverting the FPs.

11. Conclusion

11.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposals are 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. The Diversion Order sealed on 15th November 2018 should not be confirmed and should be abandoned and a new Diversion Order should be made with the Schedule reflecting the correct routes and widths of the proposed footpaths.

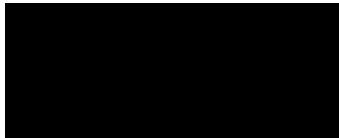
AUTHORISATION

Under the authorisation granted by the Council on 10 May 2018, the Place Law Manager is hereby requested to seal an Order to divert:

- 1) Two sections of Public Footpath BA27/19 and
- 2) Two sections of Public Footpath BA27/20

as shown on the Decision Plan and detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.

The decision is made not to confirm but to abandon the Bath and North East Somerset Council (Public Footpaths BA27/19 and BA27/20, River Terrace and Memorial Park, Keynsham) Public Path Diversion Order 2018 sealed on 15th November 2018.



.....
Craig Jackson

Team Manager - Highways Maintenance and Drainage

Dated: 31/05/19.

Appendix 1
 Decision Plan
 Public Footpaths BA27/19
 and BA27/20

Public footpath to be created

H J K L K M N P Q R S T U V F W

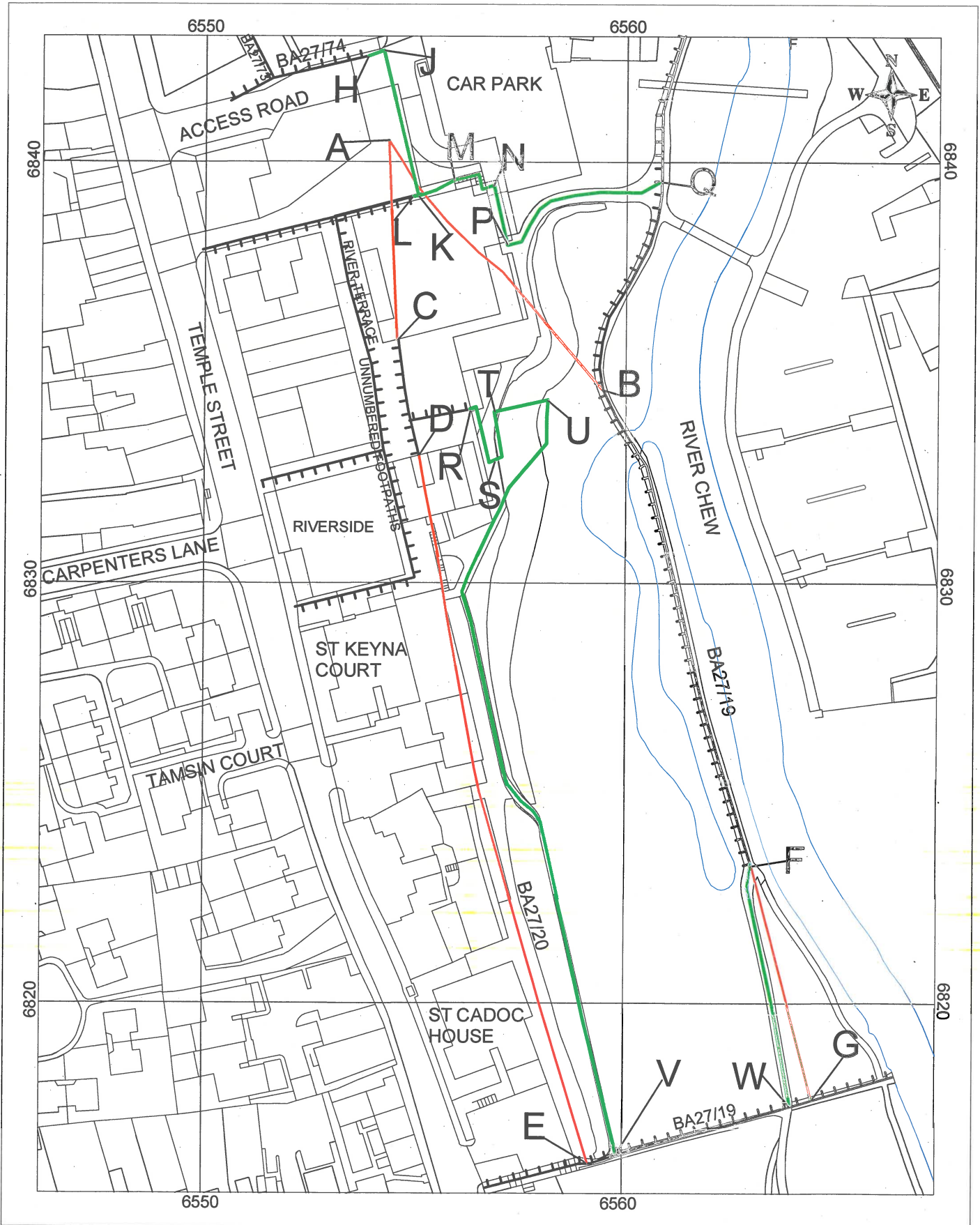
Unaffected public footpath

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Public footpath to be stopped up

A B A C D E F G

Scale: 1:1250



DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of public footpath commencing from a junction with Public Footpath BA27/20 at grid reference ST 6554 6840 (point A on the Decision Plan) and proceeding in a generally southeasterly direction for approximately 78 metres to a junction with Public Footpath BA27/19 at grid reference ST 6559 6834 (point B on the Decision Plan).

The full width of the section of public footpath commencing from a junction with Public Footpath BA27/19 at grid reference ST 6554 6840 (point A on the Decision Plan) and proceeding in a generally southerly direction for approximately 47 metres to a junction with unnumbered footpath at River Terrace at grid reference ST 6554 6835 (point C on the Decision Plan).

The full width of the section of public footpath commencing from a junction with unnumbered footpath at River Terrace at grid reference ST 6555 6833 (point D on the Decision Plan) and proceeding in a generally south-southeasterly direction for approximately 175 metres to a junction with Public Footpath BA27/19 at grid reference ST 6559 6816 (point E on the Decision Plan).

The full width of the section of public footpath commencing from grid reference ST 6563 6823 (point F on the Decision Plan) and proceeding in a generally south-southeasterly direction for approximately 58 metres to a junction with Public Footpath BA27/19 at grid reference ST 6564 6817 (point G on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from a junction with Public Footpath BA27/74 at grid reference ST 6553 6842 (point H on the Decision Plan) and proceeding in a generally east-northeasterly direction for approximately 4 metres to grid reference ST 6554 6842 (point J on the Decision Plan) and turning in a generally southerly direction for approximately 35 metres to a junction with a new public footpath at grid reference ST 6555 6839 (point K on the Decision Plan) and turning in a generally west-southwesterly direction for approximately 1 metre to a junction with unnumbered footpath at River Terrace at grid reference ST 6554 6839 (point L on the Decision Plan).

Width: 2 metres between grid reference ST 6553 6842 (point H on the Decision Plan) and grid reference ST 6554 6839 (point L on the Decision Plan).

Appendix 2

A section of public footpath commencing from a junction with a new public footpath at grid reference ST 6555 6839 (point K on the Decision Plan) and proceeding in a generally northeasterly direction for approximately 9 metres to grid reference ST 6555 6839 (point M on the Decision Plan) and turning in a generally easterly direction via steps for approximately 9 metres to grid reference ST 6556 6839 (point N on the Decision Plan) and turning in a generally southerly direction via steps for approximately 16 metres to grid reference ST 6557 6838 (point P on the Decision Plan) and turning in a generally northeasterly direction for approximately 42 metres to a junction with Public Footpath BA27/19 at grid reference ST 6560 6839 (point Q on the Decision Plan).

Width: 1.1 metres between grid reference ST 6555 6839 (point K on the Decision Plan) and grid reference ST 6556 6839 (point N on the Decision Plan).

1.2 metres between ST 6556 6839 (point N on the Decision Plan) and ST 6557 6838 (point P on the Decision Plan).

3.5 metres between grid reference ST 6557 6838 (point P on the Decision Plan) and grid reference ST 6560 6839 (point Q on the Decision Plan).

A section of public footpath commencing from a junction with the unnumbered public footpath at River Terrace at grid reference ST 6556 6834 (point R on the Decision Plan) and proceeding via steps in a generally south-southeasterly direction for approximately 16 metres to grid reference ST 6556 6832 (point S on the Decision Plan) and turning in a generally northerly direction for approximately 13 metres to grid reference ST 6556 6834 (point T on the Decision Plan) and turning in a generally easterly direction for approximately 14 metres to grid reference ST 6558 6834 (point U on the Decision Plan) and turning in a generally southerly direction for approximately 191 metres to a junction with Public Footpath BA27/19 at grid reference ST 6559 6816 (point V on the Decision Plan).

Width: 1.8 metres between grid reference ST 6556 6834 (point R on the Decision Plan) and grid reference ST 6556 6832 (point S on the Decision Plan).

2 metres between grid reference ST 6556 6832 (point S on the Decision Plan) and grid reference ST 6556 6834 (point T on the Decision Plan).

Graduating at a constant rate from 2 metres at grid reference ST 6556 6834 (point T on the Decision Plan) to 3.5 metres at grid reference ST 6558 6834 (point U on the Decision Plan).

2 metres between grid reference ST 6558 6834 (point U on the Decision Plan) and grid reference ST 6559 6816 (point V on the Decision Plan).

A section of public footpath commencing from grid reference ST 6563 6823 (point F on the Decision Plan) and proceeding in a generally southerly direction for approximately 58 metres to a junction with Public Footpath BA27/19 at grid reference ST 6563 6817 (point W on the Decision Plan).

Width: 2 metres between grid reference ST 6563 6823 (point F on the Decision Plan) and grid reference ST 6563 6817 (point W on the Decision Plan).

PART 3
LIMITATIONS AND CONDITIONS

None

