

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH BA19/22,
SKYLARK FARM, PEASEDOWN ST JOHN**

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath (FP) BA19/22 at Skylark Farm, Peasedown St John. The existing FP runs between two sets of poultry houses which causes issues for farm management when agricultural machinery is used during the chicken rearing process. The landowner wishes to divert the FP away from the farm workings onto a route through woodland and grassland.

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 BA19/22 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 pay the cost of processing an Order and the cost of any required notices in a local newspaper. 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 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 and
 - should consider any material provision of the Joint Rights of Way Improvement Plan.
- 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.
- 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,

5.8 The Authority will consider the effect on Climate Change.

6. Background and Application

6.1 Public Footpath BA19/22 is recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956. A section of the FP was diverted in 2017 to a line over four flights of steps between the existing poultry houses. This further application is to divert the FP away from the steps and poultry houses altogether and provides a more commodious route to follow. After consultation a decision was made to start the diversion approximately 18 metres further north to alleviate safety concerns. The existing definitive line limits accessibility because of the steps. Farming operations are held in close proximity to the Existing FP. The proposed route is on a less steep line skirting below the farm buildings and yards, providing a more pleasant walk.

6.2 Description of the Route to be Diverted

The full width of the section of public footpath BA19/22 commencing from grid reference ST 7060 5575 (Point A on the Decision Plan) and continuing in a generally north westerly direction for approximately 333 metres to a junction with Woodborough Farm Road and FP BA19/21 at grid reference ST 7051 5606 (Point B on the Decision Plan) (referred to as “the Existing FP”).

6.3 Description of the Proposed Footpath

A section of public footpath commencing from grid reference ST 7060 5575 (Point A on the Decision Plan) and continuing in a generally north easterly direction for approximately 212 metres to a junction with FP BA19/21 at grid reference ST 7074 5590 (Point C on the Decision Plan) (referred to as “the Proposed FP”).

6.4 The Proposed FP will be 2 metres wide.

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

7. Consultations

- 7.1 Affected landowners, Peasedown St John Parish Council, national and local user groups, the Ward Councillors and statutory undertakers were all consulted for a period of four weeks ("the Consultation Period"). Additionally, site notices were erected at either end of the section of the Existing and Proposed FP and on the Authority's website to seek the views of members of the public. The consultation showed the diversion commencing at point X on the Decision Plan, immediately turning eastwards after the field boundary at grid reference ST 7060 5574. However, after the consultation a decision was made to start the diversion approximately 18 metres further north at point A at grid reference ST 7060 5575. Further explanation follows.
- 7.2 In response to the consultation, a number of statutory undertakers stated that their plant would not be affected.
- 7.3 The local Ramblers representative was concerned regarding the nearness of the footpath to the adjoining parcel of land. There is a difference in ground levels at point X, with little in the way of fencing or hedging on the boundary line. The local Ramblers representative was concerned for safety of walkers.
- 7.4 The adjoining landowner was concerned because a menage was being created on his land, adjacent to the proposed footpath, which would mean walkers would be above the height of horses and their riders. He was concerned that this could spook the horses if they were surprised by walkers unexpectedly.
- 7.5 Site meetings and conversations were held between the farm manager, the adjoining landowner and the Officers to try to resolve the raised safety issue regarding the ground level difference/proximity at the boundary. Various options were considered, giving consideration to safety for walkers, safety for the menage-users and horses, future maintenance and simplicity for walkers to follow.
- 7.6 A consensus was not agreed by all and so a compromise is being recommended. It is the view of the Officers that a route bisecting the land, from point A on the Decision Plan, rather than on the boundary from point X, will alleviate safety issues for walkers on the footpath and riders with horses on the land below, whilst creating a simple enough route for the public to follow. The Proposed FP is suitable for future maintenance. Views and a more pleasant walk would still be achieved. A route further north was ruled out as it was considered by the Officers that it would not be followed by the public because it wasn't a simple line and because of the uneven terrain. This would be difficult to sign/enforce on open land. It also covered terrain difficult to even out initially in order to bring it up to standard fit for use by the public and would be difficult to maintain in the future.

7.7 A concern was raised by a member of the public (Mr B) suggesting that the proposal would mean 'walking on the road' which would be a safety hazard as there are no footways on the road (Gassons on the map). Mr B was also concerned that the proposal would add extra distance and time to walking the FP. Further correspondence was held between the Officer and Mr B, as the Officer considered there was a misunderstanding, as no walking on the road was being proposed. However, Mr B reiterated the unsuitability of the proposal. Mr B was invited to a site meeting to discuss the issues raised but he was not responsive to this.

7.8 His concerns include (*Officer's response in italic*):

1. "Considering the steep decline further down to Braysdown lane, I wouldn't have thought anyone who couldn't navigate a flight of steps would even use the footpath in the first place." *It is true there is a slope on other sections of the FP but this does not detract from the fact that there will be an improvement to accessibility by removing the flights of steps from the route. This is further considered at paragraphs 8.13 to 8.19.*

2. "The chicken farm has been there for a very long time and is well known that the smell affects the whole area depending on wind direction, we all just have to close our windows on the house when the wind comes our way." *The Proposed FP is further away from the workings of the chicken farm so the associated smell should be improved if not alleviated.*

3. "Farm machinery should be slower than vehicles on the road. As there are few vehicle movements on site when I have walked through in the past, we have never felt in danger from the machinery." *The most common cause of serious and fatal injuries in agriculture involve moving and overturning vehicles (Health & Safety Executive (HSE) website). There are regular occasions when large farm vehicles are in close proximity to the Existing FP. The applicant is aiming to reduce risk to the public by removing the FP from the poultry house area.*

4. "If there is a need to wear full PPE through a farm, then obviously the farm is not following safe working practices. There are many footpaths through farms and this is the first time I can see from looking online that this has been an issue. The footpath has always been there and if the farm has made it unsafe then they should change their practices accordingly". *Health & safety standards have improved over the years. The HSE "poultry farm example risk assessment" identifies inhaling dust from poultry dander and litter, chemical substances and risk from disease as issues that can be dealt with by workers wearing PPE etc. This is obviously not possible for the public. The Applicant has a duty to address these risks where possible. Diverting the FP reduces these risks for the public.*

5. Mr B stated that he uses the Existing FP, “to get from Braysdown to Writhlington Convenience Store. The proposed footpath would be a longer distance, which means walking on the busy lane, which has no pavement, will happen.” *There is no necessity to walk on Gassons as a result of this proposal. It is not possible to walk from Braysdown to Writhlington using only Public Rights of Way. The distance is addressed at paragraph 8.5.*

6. Mr B stated that the footpath has been a “disgrace for the last few years, and the belief that Skylark Farm will keep it clear is beyond belief”. *If the proposal goes ahead, the Proposed FP will be brought up to a standard fit for use by the public before the diversion is brought into effect and will be maintained to that standard by the Authority.*

7.9 Cllr Walker had no objection to the proposal. Cllr Bevan considered that the proposal sounded beneficial for the public and the applicant alike.

7.10 No other responses were received.

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 paths in the interests of the public and/or of the owner, lessee or occupier of the land crossed by the path:** The Existing FP runs between poultry houses creating issues for farm management. comprising danger from agricultural machinery movement, breaches to biosecurity and site security which are exacerbated by the public being able to walk through the site at any time of day or night. The applicant, as landowner, has requested the diversion to improve the management of the farm by taking the footpath away from the poultry houses and yards, thereby allowing better biosecurity and site security and removing danger to the public from farm machinery. The diversion is proposed in the interest of the landowner to improve farm management. The diversion of the Proposed FP is therefore expedient in the interests of the landowner and 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 Existing FP and Proposed FP start at the same point on the same path. The Proposed FP joins the same path (FP BA19/21) as the Existing FP at a point approximately 279 metres further south east. The walker can then walk along FP BA19/24 to its junction with Woodborough Farm Road. It is considered the termination point will therefore be substantially as convenient to the public. Connectivity is improved to FP BA25/15,

providing a more direct route that doesn't involve walking on a road (Gassons). 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:** Matters such as length, difficulty of walking and the purpose of the path pertain to the convenience to the public.
- 8.5 How the proposal affects the length depends where the walker wishes to go. A walker wishing to reach Woodborough Farm Road from point A (south-north) will have a further approximately 158 metres to walk. However, a walker wishing to reach FP BA23/15 from BA19/24 (avoiding using the class 4 highway) (southwest-northeast) will have approximately 161 metres less distance to walk. The Existing FP goes over 4 flights of steps and passes through two field boundaries with kissing gates whereas the Proposed FP has a gentle slope and passes through no field boundaries requiring kissing gates, making the terrain an improvement for the walker. The purpose of the path is likely to be both leisure and to get from A to B. The extra distance would not adversely affect a leisure walker taking into account the wider Rights of Way network. If a walker is walking from Braysdown to Writhlington (a more purposeful walk mentioned by an objector), the increase in length of 158 metres, over a walk of approximately 2 kilometres is still not proportionally large. The easier terrain and less field boundaries may counteract any inconvenience of extra distance; it is considered, on balance, that the Proposed FP is not substantially less convenient to the public as a consequence of the diversion. This part of the test should therefore be considered to have been met.
- 8.6 **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.**
- 8.7 **Public enjoyment of the Path:** The Existing FP runs between poultry houses which carry an associated smell and farm machinery is regularly in use in the vicinity of the Existing FP. The Existing FP runs over four flights of steps. The Proposed FP runs on a gentle slope through a wooded area with improved views over the valley. The topography is therefore improved and consequently walking the Proposed FP should be more enjoyable for the public; this test should therefore be considered to have been met.
- 8.8 **Effect on other land served by the existing footpath and land affected by the proposed path:** The Proposed FP will improve farming purposes and there are no adverse effects on other land served by the Existing FP or on land affected by the Proposed FP; this test should therefore be considered to have been met.

- 8.9 **Effect on land affected by any proposed new path, taking into account the provision for compensation:** The Proposed FP is owned by the Applicant; so there is no adverse effect with regard to compensation; this test is therefore considered to have been met.
- 8.10 **The Authority must have regard to the contents of the Rights of Way Improvement Plan.**
- 8.11 The proposal will contribute towards the Authority achieving the following actions which are identified in the Rights of Way Improvement Plan's Statement of Actions including:
- Action 4.3 - *"Identify and carry out improvements for people with mobility difficulties and visual impairments"* (i.e. improved connectivity with FP BA23/15, removal of fields boundaries and kissing gates and removal of 4 flights of steps)
 - Action 4.4 - *"Identify road safety improvements that enable increased use of routes"* (i.e. providing an alternative to FP BA19/23 & Gassons class 4 highway with no pavement to access FP BA23/15)
 - Action 4.6 - *"Identify gaps in the wider recreational network that will improve accessibility and connectivity"* (i.e. improved accessibility with a gentle slope rather than steps and gates and improved connectivity with FP BA23/15).
- 8.12 **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.**
- 8.13 The Proposed FP will have no adverse effect on forestry or biodiversity. The Proposed FP will have a positive effect on farming by taking the route away from poultry houses and yards. Path users with mobility and sight impairments will benefit from avoiding 4 flights of steps and from removal of 2 kissing gates currently at field boundaries.
- 8.14 **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.**
- 8.15 Connectivity from the start to the end of the diversion is not affected as the walker can still walk to the same point at either end. The Proposed FP improves connectivity between south and northeast, by providing a more direct link to FP BA23/15 which avoids walking on a class 4 highway without pavements (Gassons).
- 8.16 Path users with mobility and sight impairments will benefit from a more level route on the Proposed FP, rather than over 4 flights of steps. Path users with mobility, hearing and sight impairments will benefit from not having to walk through farmyards where farm machinery is regularly used. There are no field boundaries requiring

kissing gates on the Proposed FP which is a more straightforward route providing improvement for path users with mobility impairments. The proposed diversion has a neutral effect on those with other impairments.

- 8.17 The gradient of the Proposed FP is an improvement over the gradient of the Existing FP which runs over 4 flights of steps.
- 8.18 Future maintenance will be improved as there are no steps or field boundaries on the Proposed FP. Once the Proposed FP is established it should require little maintenance.
- 8.19 Safety will be improved as the Proposed FP does not run through farmyards where farm machinery is regularly used. Four flights of steps being removed from the route will improve safety.
- 8.20 Views over the valley from the Proposed FP will replace walking between Poultry Houses adding amenity value.
- 8.21 The Proposed FP does not have any impact on width or status.
- 8.22 It is considered that on balance the proposed diversion is 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 proposal is part of the ongoing management of the network and therefore contributes towards helping to tackle the Climate Emergency.

10. Risk Management

- 10.1 There are no significant risks associated with diverting the FP.

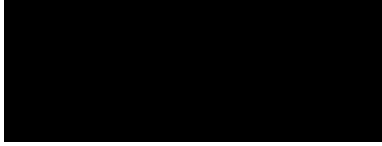
11. Conclusion

- 11.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposal is 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.

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 BA19/22 as shown on the Decision Plan and detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



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Dated: 03/11/2021

Craig Jackson

Team Manager - Highways Maintenance and Drainage

Appendix 1 Decision Plan

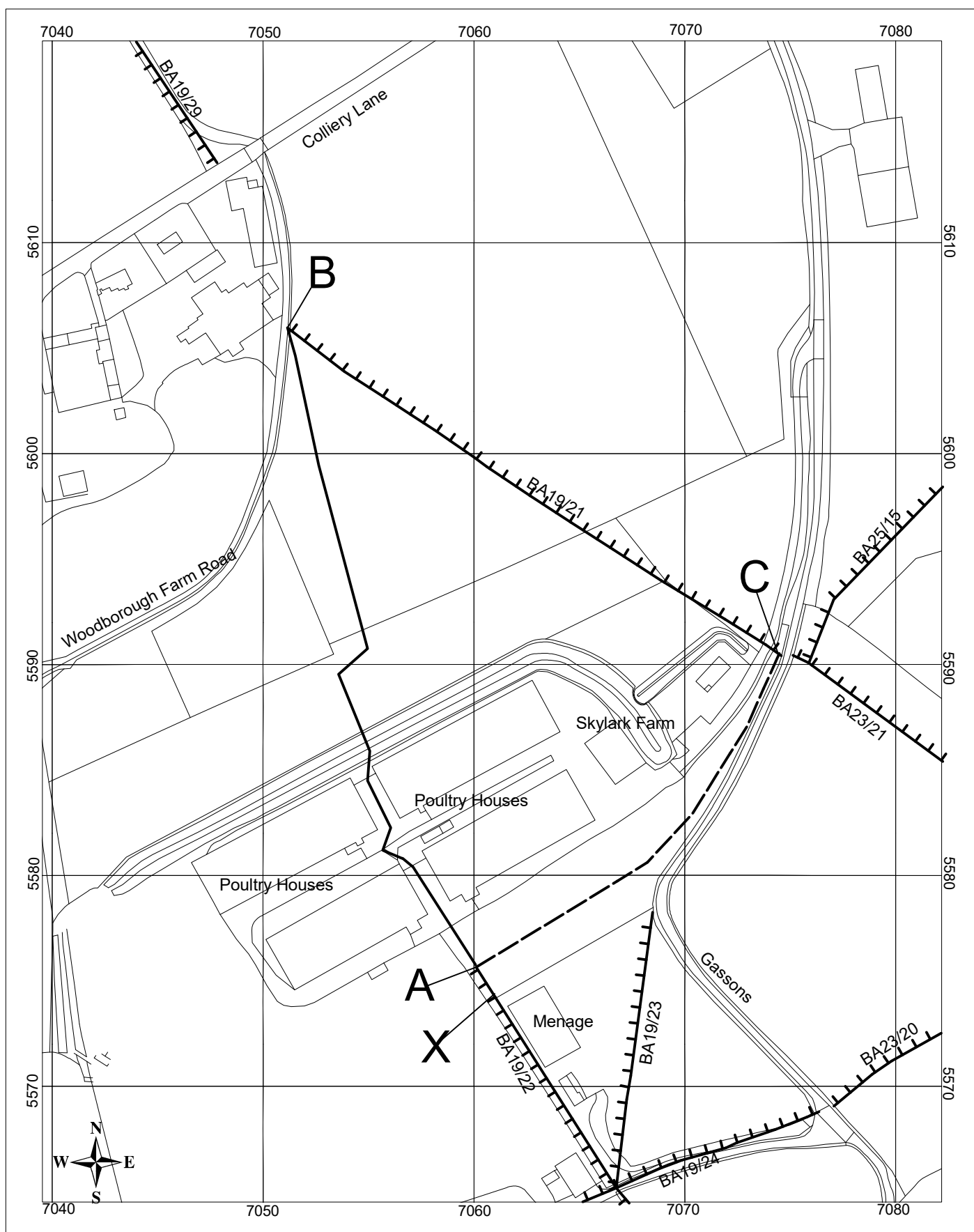
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Public footpath to be stopped up A B

Unaffected public footpath

Public footpath to be created A_____ C

Original proposed start to diversion X



DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of public footpath BA19/22 commencing from grid reference ST 7060 5575 (Point A on the Decision Plan) and continuing in a generally north westerly direction for approximately 333 metres to a junction with Woodborough Farm Road and Public Footpath BA19/21 at grid reference ST 7051 5606 (Point B on the Decision Plan)

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from grid reference ST 7060 5575 (Point A on the Decision Plan) and continuing in a generally north easterly direction for approximately 212 metres to a junction with Public Footpath BA19/21 at grid reference ST 7074 5590 (Point C on the Decision Plan)

Width: 2 metres between grid reference ST 7060 5575 (Point A on the Decision Plan) and grid reference ST 7074 5590 (Point C on the Decision Plan).

PART 3

LIMITATIONS

None.