

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH CL9/36 IN
FARMBOROUGH**

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath CL9/36 in Farmborough away from a yard in which horses are kept so that walkers will instead follow a fenced path away from the horses.

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 CL9/36 as detailed on the plan attached at Appendix 1 ("the Decision Plan") and in the schedule attached at Appendix 2 ("the Decision Schedule").

3. Financial Implications

- 3.1 The Applicant has agreed to pay the cost for processing an Order, the cost of any required notices in a local newspaper and for the works required to raise the new route to an acceptable standard for use by the public. Should an Order be made and confirmed, the Proposed Footpath will become maintainable at public expense.
- 3.2 Should an Order be made and objections received and sustained, then the Order will either be referred back to the Team Manager - Highways Maintenance and Drainage or to the 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 Public footpath CL9/36 is recorded on the Definitive Map and Statement which have a relevant date of 26 November 1956. The legal alignment has remained unchanged ever since.

6.2 The Existing Footpath runs diagonally across a yard in which the applicant keeps racehorses, including a stallion. The landowner wishes to segregate her horses from the public, for safety reasons.

6.3 Description of the Existing Footpath

The proposal is to divert the full width of the section of Public Footpath CL9/36 commencing from grid reference ST 6538 6038 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 128 metres to a junction with Public Footpath CL9/42 and Bath Road at grid reference ST 6550 6039 (point B on the Decision Plan). This route is referred to as the "Existing Footpath".

6.4 Description of the Proposed Footpath

The revised proposed route commences from grid reference ST 6538 6038 (point A on the Decision Plan) and proceeds in a generally east-north-easterly direction for approximately 125 metres to a junction with the FP CL9/42 at grid reference ST 6550 6042 (point C on the Decision Plan). The width would be 2.5 metres throughout. This route is referred to as the "Proposed Footpath".

6.5 Limitations and Conditions

No limitations or conditions are proposed. The Proposed Footpath includes crossing field boundaries and authorisation of pedestrian gates is proposed at 2 field boundaries under section 147 of the Act, to prevent the ingress and egress of animals.

7. Consultations

7.1 Affected landowners, Farmborough Parish Council, national and local user groups, the Ward Councillor and statutory consultees were all consulted about the proposed diversion for a period of four weeks ("the Consultation Period"). Additionally site notices were erected at both ends of the proposed diversion and on the Authority's website to seek the views of members of the public.

- 7.2 In response to the consultation, a number of statutory undertakers stated that their plant would not be affected.
- 7.3 The local Ramblers representative stated that he had no objections to the proposal.
- 7.4 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 diagonally across a yard in which the applicant (also the landowner) keeps dressage horses, including a stallion. Walkers are therefore obliged to walk in close proximity to these horses, sometimes in and amongst them, with a risk of spooking them (particularly when accompanied by dogs). With the Proposed Footpath walkers would instead follow a fenced path away from the horses. The diversion of the footpath would therefore be 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 Proposed Footpath starts at the same point as the Existing Footpath and finishes at a point on Public Footpath CL9/42, which is 29 metres away from the end point of the Existing Footpath and which connects with it. Because these two footpaths connect in this way, the finish point of the Proposed Footpath is considered substantially as convenient to the public as the finish point of the Existing Footpath, and 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 overall length of the diverted route will be 26 metres longer than the length of the existing route. However the location of the Existing and Proposed Footpaths within the wider rights of way network in the Parish is such that this additional distance for the walker is likely to represent an insignificant increase in their overall walk. (An example of such a walk is a clockwise 3.8 kilometre circuit comprising public rights of way CL9/36, CL9/41, CL9/53, CL9/54, CL9/44, CL9/45 & CL9/42, in that order). It is therefore considered, on balance, that the Proposed Footpath is not substantially less convenient to the public and that 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 will separate walkers from the horses by means of fencing on each side and users of the footpath will therefore be able to enjoy a view of the animals without any fear of them charging or making other physical contact. The effect on public enjoyment of the Proposed Footpath as a whole is therefore one of improvement, and 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 on 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 Existing Footpath already crosses the same land, all of which is owned by the Applicant in any event.
- 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 Footpath would have a neutral effect on farming and forestry, and on biodiversity. It will have positive benefits for members of the public with certain disabilities (see paragraph 8.12 below).
- 8.10 **The effect of the diversion on the additional criteria identified in the Authority's Public Path Order Policy; namely, Connectivity, Equalities Impact, Gaps and Gates, Gradients, Maintenance, Safety, Status, Width and Features of Interest:**
- 8.11 The Proposed Footpath starts at the same point as the Existing Footpath and finishes on Public Footpath CL9/42 approximately 29 metres away from where the Existing Footpath currently finishes. This will have a minimal effect on connectivity (see paragraph 8.3 above).
- 8.12 As the Proposed Footpath will keep walkers away from the horses on the land, it will have a positive impact on those with mobility and visual impairments. The proposed diversion will have a neutral effect on those with other impairments.
- 8.13 It is intended to authorise gates under s147 of the Act at two field boundaries to prevent the ingress and egress of animals. As there are two gates on the Existing Footpath, there would be no increase in the overall amount of gates on the path. Authorising the gates would be in keeping with the principles of 'Least Restrictive Access'.

- 8.14 There is no different in gradient between the Proposed and Existing Footpaths.
- 8.15 It will be easier to maintain the surface of the Proposed Footpath than the surface of the Existing Footpath, as the fencing will keep the horses away.
- 8.16 Similarly the Proposed Footpath will improve walkers' safety, as they will no longer have to walk amongst the horses.
- 8.17 The Proposed Footpath will have a neutral impact on Status and Width, although it is worth noting that its 2.5 metre width will be greater than the guideline minimum width of 2 metres set out in the Policy.
- 8.18 The Proposed Footpath will not remove public access from any feature of interest or place of resort, nor will it diminish the quality or diversity of any views.
- 8.19 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 landowner.
- 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 CL9/36 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.

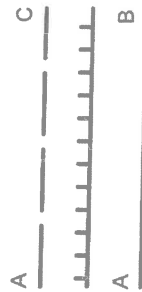

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Craig Jackson – Team Manager, Highways Maintenance and Drainage

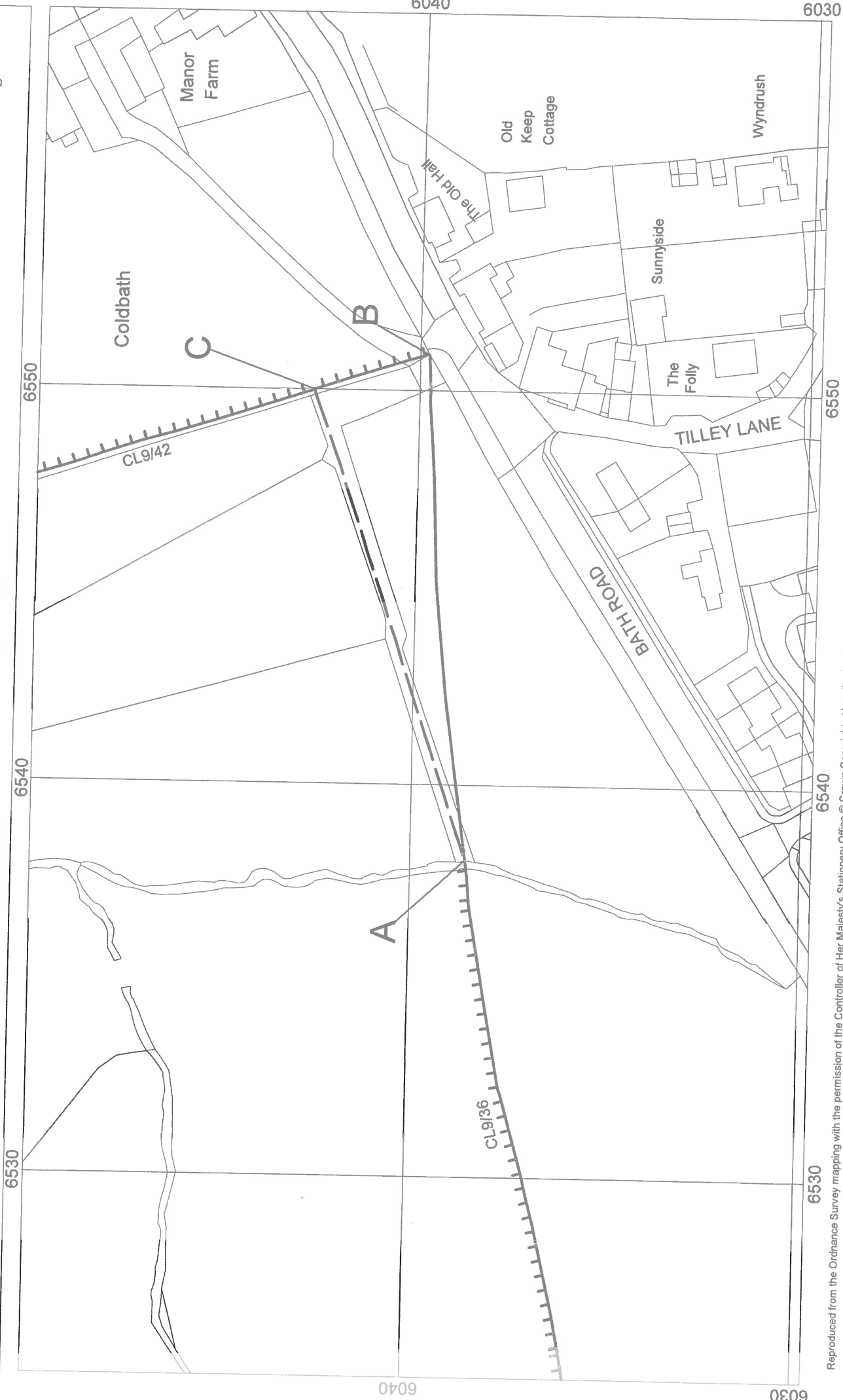
Dated:.....19/09/19.....

**Appendix 1 - Decision Plan
Public Footpath CL9/36,
Farmborough**

-  Public footpath to be created
-  Unaffected public footpath
-  Public footpath to be stopped up



Scale : 1:1,250



APPENDIX 2 - DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of Public Footpath CL9/36 commencing from grid reference ST 6538 6038 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 128 metres to a junction with Public Footpath CL9/42 and Bath Road at grid reference ST 6550 6039 (point B on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from grid reference ST 6538 6038 (point A on the Decision Plan) and proceeding in a generally east-north-easterly direction for approximately 125 metres to a junction with the FP CL9/42 at grid reference ST 6550 6042 (point C on the Decision Plan).

Width: 2.5 metres between grid references ST 6538 6038 (point A on the Decision Plan) and ST 6550 6042 (point C on the Decision Plan).

PART 3

LIMITATIONS AND CONDITIONS

None.