

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATHS CL1/29 &
CL1/30 IN CAMELEY**

1. The Issue

- 1.1 An application has been made to divert sections of Public Footpaths CL1/29 & CL1/30 in Cameley: in the case of Public Footpath CL1/29, this is to record the route that has been walked by the public since fishing lakes were built on the land in the 1970s; in the case of Public Footpath CL1/30, this is to divert the public away from both a lane providing vehicular access to houses and a yard containing farm machinery.

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 sections of Public Footpaths CL1/29 & CL1/30 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 Footpaths 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 footpaths CL1/29 & CL1/30 are recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956. The legal alignment has remained unchanged ever since.

6.2 Public Footpath CL1/29 crosses fishing lakes which were constructed in the 1970s. Since their construction, it has not been possible to walk the full legal lines of this footpath. Reinstatement of its legal line would require either the removal of these lakes, or the building of bridges or causeways across them.

6.3 Public Footpath CL1/30 runs along a lane down which motor vehicles access various houses in the locality, and then through a yard in which farm machinery is kept.

6.3 Description of the Existing Footpaths

The proposal is to divert the following sections of footpath:

6.4 The full width of the section of Public Footpath CL1/29 commencing from grid reference ST 6073 5762 (point A on the Decision Plan) and proceeding in a generally east north-easterly direction for approximately 289 metres, via point B on the Decision Plan, to grid reference ST 6100 5771 (point C on the Decision Plan). This route is referred to as "Footpath 1".

6.5 The full width of the section of Public Footpath CL1/30 commencing from grid reference ST 6114 5753 (point E on the Decision Plan) and proceeding in a generally northerly direction, via point F on the Decision Plan, for approximately 237 metres to grid reference ST 6116 5776 (point G on the Decision Plan). This route is referred to as "Footpath 2".

6.6 These routes are referred to collectively as the "Existing Footpaths".

6.7 Description of the Proposed Footpaths

The proposal diverts the Existing Footpaths to the following routes:

6.8 A public footpath commencing from grid reference ST 6073 5762 (point A on the Decision Plan) and proceeding in a generally north-easterly direction for approximately 290 metres, via point D on the Decision Plan, to grid reference ST 6100 5771 (point C on the Decision Plan). This route is referred to as "Diversion 1".

- 6.9 A public footpath commencing from grid reference ST 6114 5753 (point H on the Decision Plan) and proceeding in a generally northerly direction for approximately 233 metres, via point J on the Decision Plan, to grid reference ST 6116 5776 (point G on the Decision Plan). This route is referred to as "Diversion 2".
- 6.10 These routes are referred to collectively as the "Proposed Footpaths" and will be two metres wide throughout.
- 6.11 **Limitations and Conditions**
No limitations or conditions are proposed. The Proposed Footpaths cross field boundaries and authorisation of pedestrian gates is proposed at three field boundaries under section 147 of the Act, to prevent the ingress and egress of animals.

7. Consultations

- 7.1 Affected landowners, Temple Cloud with Cameley 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 each of the Proposed Footpaths and on the Authority's website to seek the views of members of the public.
- 7.2 In response to the consultation, both Sky Telecommunications Services and Virgin Media stated that their plant would not be affected. A response was received from Bristol Water to the effect that part of the proposed new route for Public Footpath CL1/29 lay in their 2.5-metre easement strip to the side of a water pipeline; however, they did not object to the proposals.
- 7.3 Vodafone, Cadent Gas, the local Ramblers representative and a neighbouring landowner stated similarly that they had no objections to the proposals.
- 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:**

Diversion 1

Re-instatement of the existing legal line of public footpath CL1/29 would require the landowner to either remove the fishing lakes or build bridges or causeways across them. With the proposed diversion avoiding the need

for, and cost of, any of these measures, the test of expediency in the landowners' interests is considered to have been met.

Diversion 2

Public footpath CL1/30 currently runs along a lane down which motor vehicles access various houses in the locality, and then through a working yard. The proposed diversion would re-route walkers through an agricultural field followed by a short section of woodland, keeping them away from both motor vehicles and the yard workings. This will improve public safety and effective farm management; this test is considered expedient in the interests of both the landowners and the public.

- 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:** Diversion 1 will not alter the start or finish point of Footpath 1. Diversion 2 starts at a point on Cameley Road approximately 3.5 metres away from the current starting point of Footpath 2 which shares substantially the same characteristics and the finishing point is not altered. The termination points which will be altered are substantially as convenient to the public as the current termination points and this test is 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 Diversion 1 will be 1.5 metres longer than the length of Footpath 1, and the overall length of Diversion 2 will be 2.5 metres shorter than the length of Footpath 2. These are considered very modest changes in length, particularly taking into account the location of the Existing and Proposed Footpaths within the wider rights of way network in the Parish - such that these changes in distance for the walker are likely to represent virtually indistinguishable changes in distance to their overall walk. It is therefore considered that the Proposed Footpaths will not be substantially less convenient to the public and 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:** Diversion 1 moves the walker into an adjacent agricultural field that is very similar in terms of views. Diversion 2 avoids motor vehicles and a working yard and adds a short but pleasant section of woodland walking next to a stream. The effect on public enjoyment is therefore neutral in the case of Diversion 1 and improved in the case of Diversion 2.
- 8.7 **Effect on other land served by the existing footpaths and land affected by the proposed footpaths:** The proposed diversions will not have an adverse effect either on land served by the Existing

Footpaths, or on land affected by the Proposed Footpaths, and no adverse comments have been received from anyone with an interest in land crossed by any of these routes. Consequently, this test should be considered to have been met.

8.8 **Effect on land affected by any proposed new path, taking into account the provision for compensation:** As part of the application process all relevant landowners have submitted a signed declaration that they agree to the proposed diversion crossing their land and that they waive their right to any compensation.

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:** Diversion 1 would have a neutral effect on farming and forestry. Diversion 2 would have positive effect on farming in keeping walkers away from a working yard and a neutral effect on forestry.

In terms of biodiversity, Diversion 1 will have a neutral effect. Diversion 2 will involve a limited amount of vegetation clearance; 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.

Diversion 1 will have a neutral effect on path users with mobility or visual impairments. However such users are likely to find Diversion 2 more commodious to use due to the avoidance of motor vehicles and the working yard, as well as the need to pass through one less gate.

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 Diversion 1 starts and finishes at the same points as Footpath 1. Diversion 2 starts at a point on the same highway approximately 3.5 metres away from the point at which Footpath 2 currently starts but finishes at the same point. There is therefore only a very minimal effect on connectivity.

8.12 Diversion 1 will have a neutral equalities impact. As Diversion 2 will pass through one less gate and avoid motor vehicles and a farmyard, it will have a positive impact on those with mobility and visual impairments. There will be a neutral effect on those with other impairments.

8.13 It is intended to authorise gates under section 147 of the Act at one field boundary on Diversion 1, and at two field boundaries on Diversion 2, to prevent the ingress and egress of animals. In contrast, in the event that the legal line of the Footpath 1 was to be re-opened, it would be necessary to authorise gates at three field boundaries. There are also currently three gates on Footpath 2. Authorising the gates on the Proposed Footpaths is therefore 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 Maintenance of the Proposed Footpaths will be similar to maintenance of the Existing Footpaths.
- 8.16 The Proposed Footpaths will have a positive impact on Safety as walkers are taken away from the farmyard and access road.
- 8.17 The Proposed Footpaths will have a neutral impact on Status and Width.
- 8.18 The Proposed Footpaths 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 diversions are in accordance with the Policy.

9. Risk Management

- 9.1 There are no significant risks associated with diverting the footpaths.

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 both the landowners and the public.
- 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 sections of Public Footpaths CL1/29 & CL1/30 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



Dated: 13/07/2020

Craig Jackson – Team Manager, Highways Maintenance and Drainage

APPENDIX 2 - DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of Public Footpath CL1/29 commencing from grid reference ST 6073 5762 (point A on the Decision Plan) and proceeding in a generally east north-easterly direction for approximately 289 metres, via point B on the Decision Plan, to grid reference ST 6100 5771 (point C on the Decision Plan).

The full width of the section of Public Footpath CL1/30 commencing from grid reference ST 6114 5753 (point E on the Decision Plan) and proceeding in a generally northerly direction, via point F on the Decision Plan, for approximately 237 metres to grid reference ST 6116 5776 (point G on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from grid reference ST 6073 5762 (point A on the Decision Plan) and proceeding in a generally north-easterly direction for approximately 290 metres, via point D on the Decision Plan, to grid reference ST 6100 5771 (point C on the Decision Plan).

Width: 2 metres between grid references ST 6073 5762 (point A on the Decision Plan) and ST 6100 5771 (point C on the Decision Plan).

A public footpath commencing from grid reference ST 6114 5753 (point H on the Decision Plan) and proceeding in a generally northerly direction for approximately 233 metres, via point J on the Decision Plan, to grid reference ST 6116 5776 (point G on the Decision Plan).

Width: 2 metres between grid references ST 6114 5753 (point H on the Decision Plan) and ST 6116 5776 (point G on the Decision Plan).

PART 3

LIMITATIONS AND CONDITIONS

None.