

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath (FP) CL17/25, Blackrock Lane, Publow. The landowner wishes to divert the public footpath away from a residential building and driveway and onto a more direct route from Blackrock Lane. The Existing FP runs along a field boundary which is uneven and overgrown with trees and bushes. The Proposed FP is away from the boundary further into the field following in part the route of a permissive path which has been in existence for a number of years.

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 CL17/25 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 CL17/25 is recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956. A section of the FP was diverted under the Highways Act in 2000.

6.2 Description of the Route to be Diverted

The full width of a section of Public Footpath CL17/25 commencing from grid reference ST 6237 6476 (point A on the decision plan) and proceeding in a generally west south westerly direction for approximately 123 metres to a junction with Blackrock Lane at grid reference ST 6226 6471 (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 6237 3476 (point A on the decision plan) and proceeding in a generally west south westerly direction for approximately 122 metres to a junction with Blackrock Lane at grid reference ST 6226 6471 (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. Authorisation of a pedestrian kissing gate is proposed under section 147 of the Act at a field boundary to prevent the ingress and egress of animals.

7. Consultations

- 7.1 Affected landowners, Publow with Pensford 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 FP 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. The local Ramblers representative stated he held no objections.
- 7.3 Publow with Pensford Parish Council supported the proposal provided the exit onto Blackrock Lane was improved. This has been considered and as there will be no gate directly onto the road but just a gap, it is considered that this has been addressed. This exit point onto Blackrock Lane has been widely used by the farmer with his animals for a number of years.
- 7.4 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 path 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 along a field boundary which is uneven and overgrown with trees and bushes, which is little used by the public. It then runs through outbuildings and a driveway close to the residential property. The Proposed FP is away from the boundary further into the field running parallel to the Existing FP, following in part the route of a permissive path which has been in existence for a number of years. The diversion is proposed in the interest of the landowner to remove the route from the residential land and buildings. 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 points on the same path. The Proposed FP finishes approximately 6 metres further north of the Existing FP on Blackrock Lane, being the other side of a boundary hedge. This means it is approximately 6 metres closer to the continuation of FP CL17/25 which continues westwards once Blackrock Lane has been crossed, making it substantially as convenient as the Existing FP. 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 The Existing and Proposed FPs are of a similar length and run parallel to each other. The Proposed FP is over more even ground, with a more open aspect and should therefore be easier to walk. The purpose of the path is not adversely affected. The Proposed FP is therefore substantially as 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 Proposed FP provides a more open aspect and should therefore be more enjoyable to walk, whether the walker is walking from one point to another or enjoying a countryside ramble. Not having to walk through the residential outbuildings and driveway should make walking more enjoyable; the diversion will therefore provide an improvement to public enjoyment of the path as a whole; 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 run through a field and be fenced off from a small holding compound and the landowner farmer has indicated he is happy with the arrangement as the public have walked on the Proposed FP through the field for a number of years. There is no other adverse effect 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 neighbouring farmer who has indicated that he approves of the diversion on his land and waives any right 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 more open aspect of the Proposed FP will benefit Theme 1 of the Statement of Action – *Improving Maintenance and Safety* and Action 4.2 of Theme 4 - *carry out improvements for people with mobility difficulties and visual impairments*. The proposal will have no adverse effect on the Authority achieving other actions which are identified in the Rights of Way Improvement Plan's Statement of Action.

- 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. The public have walked the majority of the Proposed FP through farmed land for a number of years as a permissive path. The landowner farmer has agreed the route of the Proposed FP and considers there will be no adverse effect on farming. The biodiversity of the boundary trees and bushes may benefit from not having walkers on the Existing FP, although it is unlikely that anyone has actually walked the Existing FP for a number of years. Path users with mobility and sight impairments will benefit from the more open aspect of the Proposed FP.
- 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 The Proposed FP exits on to Blackrock Lane approximately 6 metres closer to the continuation of the remaining Public Footpath BA17/25, slightly improving connectivity.
- 8.16 Path users with mobility and sight impairments will benefit from a more open route on the Proposed FP, rather than over uneven ground through trees and bushes and through residential outbuildings and a driveway. The proposed diversion has a neutral effect on those with other impairments.
- 8.17 A kissing gate will be authorised at a field boundary for stock control purposes but this is in keeping with the nature of the surrounding farmed area and is in keeping with the principles of 'Least Restrictive Access'.
- 8.18 The Proposed FP will be easier to maintain as it runs over an open field, rather than through trees and bushes.
- 8.19 The more open aspect of the Proposed FP will improve public safety, as the Existing FP runs over more uneven ground.
- 8.20 The Proposed FP does not have any impact on gradient, width, status or features of interest.
- 8.21 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 FPs.

11. Conclusion

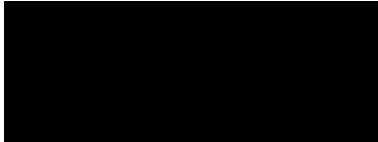
11.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposal is in compliance with the Public Path Order Policy.

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 CL17/25 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: 03/05/2022

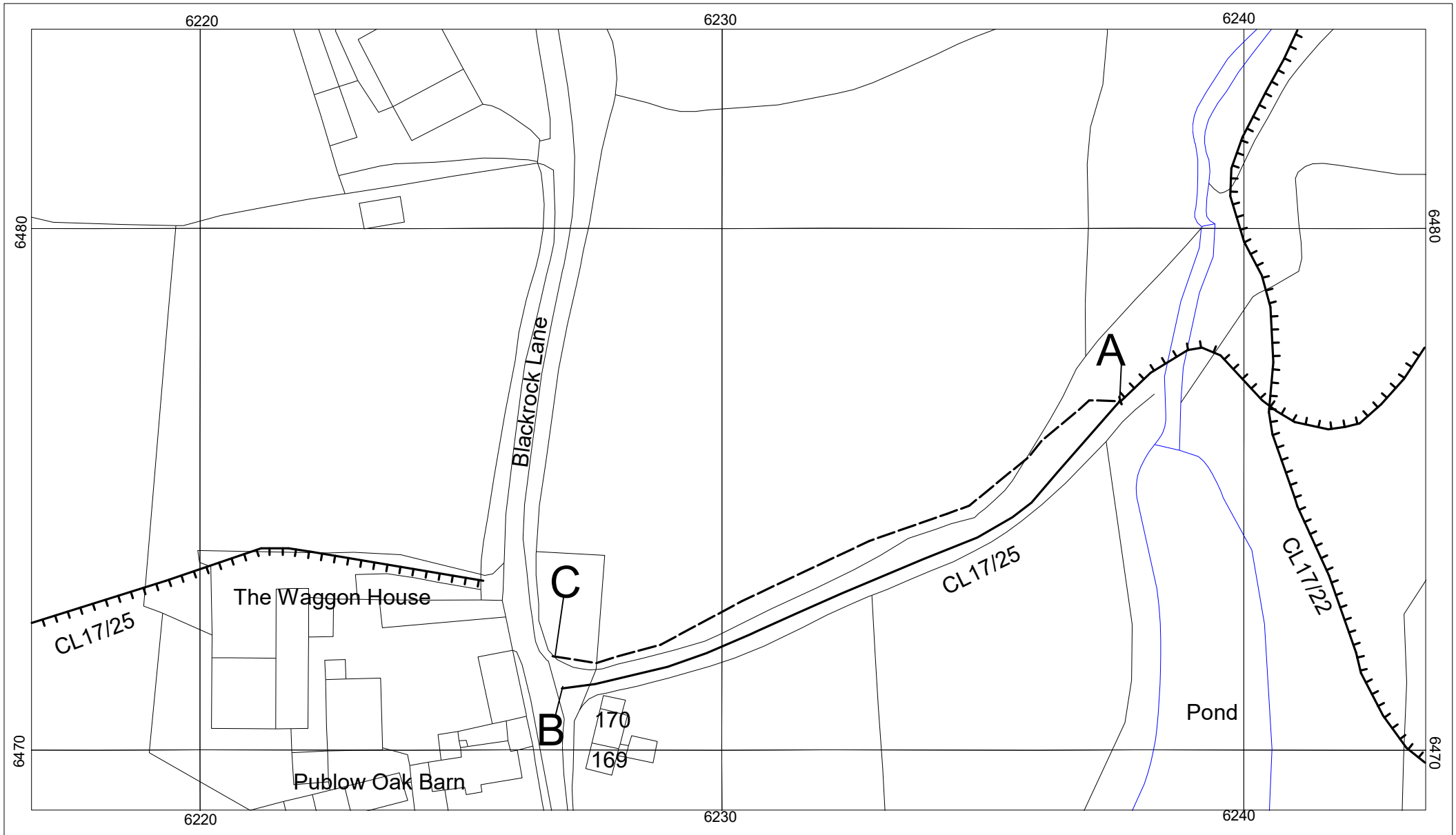

Craig Jackson

Team Manager - Highways Maintenance and Drainage

**Appendix 1
The Decision Plan**

Public footpath to be created A - - - - - C
Unaffected public footpath |||||
Public footpath to be deleted A B

Scale: 1:1,000



DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of a section of Public Footpath CL17/25 commencing from grid reference ST 6237 6476 (point A on the decision plan) and proceeding in a generally west south westerly direction for approximately 123 metres to a junction with Blackrock Lane at grid reference ST 6226 6471 (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 6237 3476 (point A on the decision plan) and proceeding in a generally west south westerly direction for approximately 122 metres to a junction with Blackrock Lane at grid reference ST 6226 6471 (point C on the decision plan).

Width: 2 metres between grid reference ST 6237 6476 (point A on the decision plan) and grid reference ST 6226 6471 (point C on the decision plan)

PART 3

LIMITATIONS AND CONDITIONS

None.