

SECTION 257 TOWN & COUNTRY PLANNING ACT 1990

APPLICATION FOR A PUBLIC PATH DIVERSION ORDER AFFECTING PUBLIC FOOTPATH CL11/26 IN HALLATROW, HIGH LITTLETON

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath CL11/26 in Hallatrow, High Littleton. These changes are proposed to enable development to be carried out in accordance with planning permission 15/01335/OUT and 19/00035/RES (Residential Housing) and would be achieved by way of a Public Path Diversion Order made under section 257 of the Town and Country Planning Act 1990.

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 CL11/26 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. The Applicant has also agreed to meet the costs of bringing the proposed new routes into a suitable condition for public use. 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 - 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. 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 257 of the Town and Country Planning Act 1990 ("the Act") the Authority must be satisfied that it is necessary for the public right of way to be diverted in order to enable development to be carried out in accordance with planning permission granted under Part III or section 293A of the Act.
- 5.3 The Authority must also give due regard to the effect the diversion will have on biodiversity and members of the public with protected characteristics under the Equality Act 2010.
- 5.4 In addition to the legislative tests detailed above, the proposals will 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.
- 5.5 The criteria are:
- Connectivity,
 - Equalities Impact,
 - Gaps and Gates,
 - Gradients,
 - Maintenance.
 - Safety,
 - Status,
 - Width,
 - Features of Interest,
- 5.6 The Authority will consider the effect on Climate Change.

6. Background and Application

- 6.1 Public Footpath CL11/26 is recorded on the Definitive Map and Statement with a relevant date of 26th November 1956. A previous Public Path Order (confirmed on 11th June 1991) diverted a section of the path immediately to the south of Point C on the Decision Plan. However there has been no previous diversion of the section of path that is the subject of these proposals.
- 6.2 The proposal is to divert a section of Public Footpath CL11/26 commencing from Point A on the Decision Plan to Point C to a new line commencing from Point A via Point B to Point C.

- 6.3 Development is planned in accordance with planning permission 19/00035/RES (approval of reserved matters with regard to outline application 15/01335/OUT for the erection of 15 dwellings and associated infrastructure). The footpath must be formally diverted to allow for the development to take place. The diversion would be achieved by way of a Public Path Diversion Order made under section 257 of the Town and Country Planning Act 1990.

Description of the Route to be Diverted:

- 6.4 The full width of the section of public footpath commencing from grid reference ST 6353 5705 (point A on the Decision Plan) and continuing in a generally southerly direction for approximately 13 metres to grid reference ST 6353 5704 (point C on the Decision Plan). This route is referred to as the "Existing Footpath".

Description of the Proposed Footpath:

- 6.5 A section of public footpath commencing from grid reference ST 6353 5705 (point A on the Decision Plan) and proceeding in a generally south-south-easterly direction for approximately 12 metres to grid reference ST 6353 5704 (point B on the Decision Plan) and turning in a generally westerly direction for approximately 4 metres to grid reference ST 6353 5704 (point C on the Decision Plan). This route is referred to as the "Proposed Footpath".

7. Consultations

- 7.1 Affected landowners, High Littleton Parish Council, national and local user groups, the Ward Councillors and statutory undertakers were all consulted about the proposed diversion for a period of four weeks ("the Consultation Period"). Additionally site notices were erected at either end of the sections of footpaths to be diverted and on the Authority's website to seek the views of members of the public.
- 7.2 In response to the consultation Bristol Water, Vodafone and Cadent Gas confirmed that they had no objection to the proposals; Sky and Virgin Media both stated that their plant would be unaffected. Wales and West Utilities identified plant in the vicinity but raised no objections. Their rights as statutory undertakers under the routes to be stopped up will be preserved in the Public Path Order.
- 7.3 An agent representing Mr Malcolm Ferris, one of the affected landowners, responded to the consultation stating that his client had "concerns about the proposal and wished to object". These concerns were specified as a concern over the change of the wooden stile to a kissing gate, and concern over the housing development increasing the potential use of the path across his property. In response to these comments, Mr Ferris' agent was invited to confirm whether his client was going to object to the application and if he was, to clarify his grounds of objection. As of the date of this report, no such objection has been received – with grounds or otherwise.

- 7.4 The Area Footpath Secretary for The Ramblers stated that he had no comments to make.
- 7.5 No other comments were received in relation to these proposals during the Consultation Period.

8. Officer Comments

- 8.1 **The legislative test under consideration is whether it is necessary to divert the public right of way to enable development to be carried out.**
- 8.2 The Existing Footpath runs over land which has planning permission to be developed and built upon. If the footpath is not diverted, the public right of way will go through the garden of one of the new dwelling houses. The Proposed Footpath will divert the route around the edge of this garden, to allow the development to take place.
- 8.3 One of the adjacent landowners has expressed concern about the housing development increasing the potential use of the footpath over his own property (see paragraph 7.3 above). However as the Proposed Footpath will increase the distance travelled across this land by a distance of just 4 metres, it is not considered that this application will have a material effect on the public's level of use of the path.
- 8.4 **The Authority must give due regard to the effect the diversion will have on biodiversity and members of the public with disabilities.**
- 8.5 The Proposed Footpath will be over a tarmac path whereas the Existing Footpath runs over an agricultural field. The development as a whole may affect biodiversity but this has been considered when granting planning permission and mitigating measures are to be taken under the planning process. The current surface of the Existing Footpath is uneven. The Proposed Footpath will be flat and over tarmac. This will have a positive impact on those with mobility and visual impairments.
- 8.6 **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.**
- 8.7 The public do not currently follow the exact legal line of the Existing Footpath but this will be rectified by the proposals. The Proposed Footpath will therefore improve connectivity.
- 8.8 The current surface of the Existing Footpath is over an agricultural field. The Proposed Footpath would run over a laid out, tarmac surface and will be easier to traverse, having a positive impact on those with mobility and visual impairments.

- 8.9 The Proposed Footpath will be created without any limitations; the gate currently in situ will be removed and the stile currently in situ will be replaced by a kissing gate, thus improving accessibility.
- 8.10 The adjacent landowner referred to in paragraph 8.3 above has expressed concern about the aforementioned change of the stile to a kissing gate. However it should be noted that this stile is not a lawful limitation nor has it ever been authorised for stock control under Section 147 Highways Act 1980; consequently its presence is unlawful. In line with government guidance and the principle of least restrictive access the Authority's Public Path Order Policy provides only for Section 147 authorisation of a stile in exceptional circumstances with the authorisation of gates or kissing gates being the normal practice. No exceptional circumstances have been brought to the Authority's attention.
- 8.11 There will be no change in gradient as a result of these proposals and there will be one less stile to maintain. With the public having to cross one less agricultural field there will be a marginal increase in safety but there will be no changes to the status or width of the footpath. Nor will there be any changes to features of interest.
- 8.12 **Climate Change**
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.

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 Public Path Diversion Order have been met and that on balance the proposed diversions are in accordance with the Council's Public Path Order Policy.
- 10.2 The Order should be made as detailed in the Decision Plan and Decision Schedule.

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 CL11/26 as shown on the Decision Plan and detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



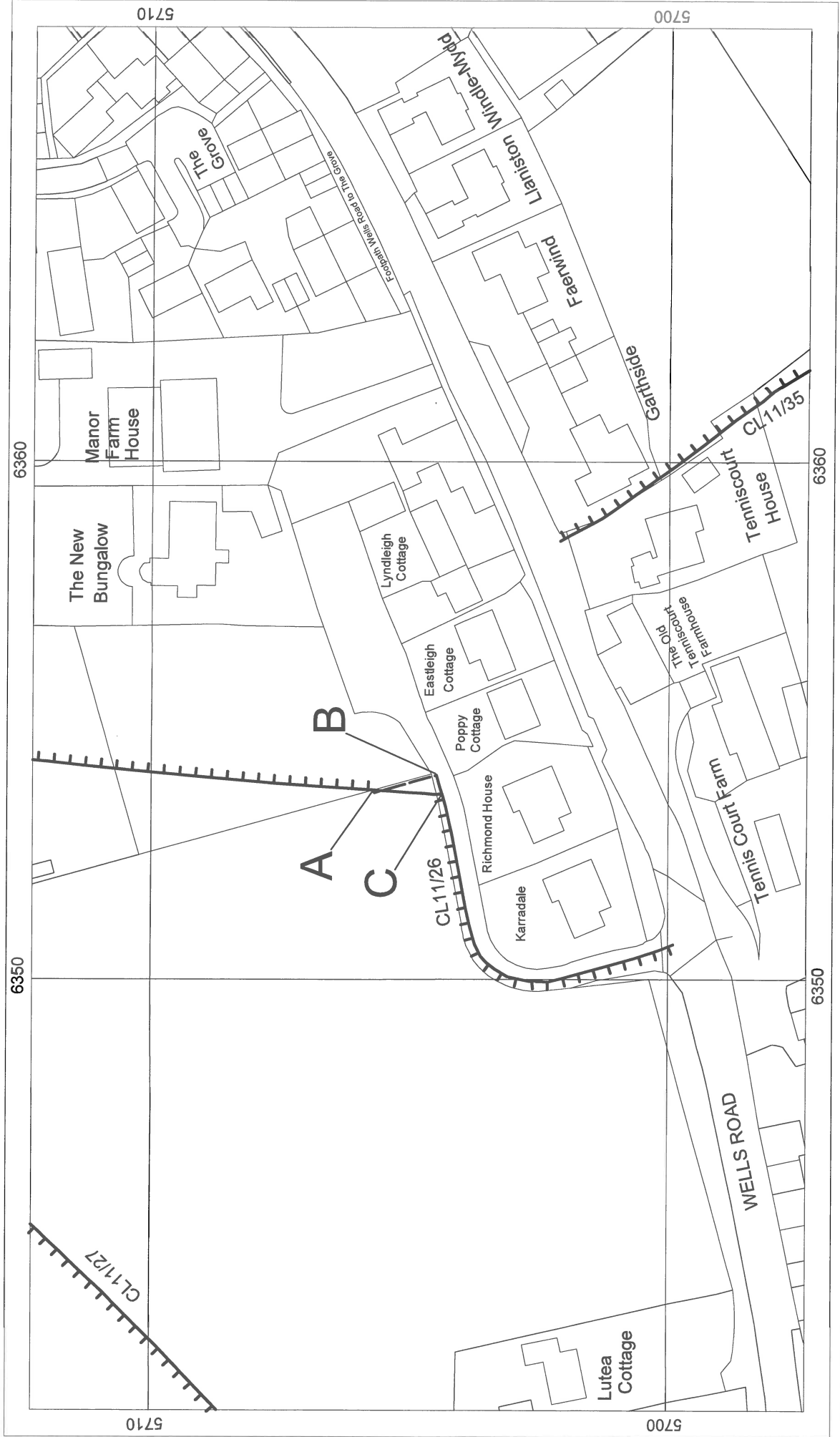
Craig Jackson
Team Manager - Highways Maintenance and Drainage

Dated: ... 16/01/20

**Appendix 1 - Decision Plan
Public Footpath CL11/26,
Hallatrow, High Littleton**

Public footpath to be created **A - - - B - - - C**
 Unaffected public footpath **|||||**
 Public footpath to be stopped up **A _____ C**

Scale: 1:1,000



APPENDIX 2 - DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of public footpath commencing from grid reference ST 6353 5705 (point A on the Decision Plan) and continuing in a generally southerly direction for approximately 13 metres to grid reference ST 6353 5704 (point C on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from grid reference ST 6353 5705 (point A on the Decision Plan) and proceeding in a generally south-southeasterly direction for approximately 12 metres to grid reference ST 6353 5704 (point B on the Decision Plan) and turning in a generally westerly direction for approximately 4 metres to grid reference ST 6353 5704 (point C on the Decision Plan).

Width: 2 metres between grid reference ST 6353 5705 (point A) and grid reference ST 6353 5704 (point C).