

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATHS CL9/26,
CL9/27, CL9/36 AND CL9/40, BARROW VALE,
FARMBOROUGH**

1. The Issue

- 1.1 An application has been made to divert sections of Public Footpaths CL9/36 and CL9/40 at Barrow Vale, Farmborough. The landowner wishes to divert the public footpaths away from farm buildings and divert the junction with A39 Bath Road from a field for farming purposes. After informal consultation it was agreed to include sections of Public Footpaths CL9/26 and CL9/27 in order to improve connectivity and increase safety when crossing A39 Bath Road.

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 Footpaths CL9/26, CL9/27, CL9/36 and CL9/40 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 Footpaths will become maintainable at public expense; however, the Applicant has agreed to maintain a bridge on Proposed FP 2 at point H on the decision plan at Appendix 1.
- 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 Footpaths CL9/26, CL9/27, CL9/36 and CL9/40 are recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956.

6.2 Description of the Routes to be Diverted

- (a) The full width of a section of Public Footpath CL9/36 commencing from grid reference ST 6448 6014 (point A on the decision plan) and proceeding in a generally east northeasterly direction for approximately 206 metres to a junction with Public Footpath CL9/37 and Public Footpath CL9/41 at grid reference ST 6468 6019 (point B on the decision plan) and continuing in a generally east-northeasterly direction for approximately 162 metres to a junction with Public Footpath CL9/40 at grid reference ST 6483 6024 (Point C on the decision plan) and continuing in a generally east-northeasterly direction for approximately 60 metres to grid reference ST 6489 6025 (point D on the decision plan) (referred to as "Existing FP 1")
- (b) The full width of a section of Public Footpath CL9/40 commencing from a junction with A39 Bath Road at grid reference ST 6486 6014 (point E on the decision plan) and proceeding in a generally north-northwesterly direction for approximately 95 metres to a junction with Public Footpath CL9/36 at grid reference ST 6483 6024 (point C on the decision plan) and turning in a generally northerly direction for approximately 372 metres to a junction with Public Bridleway CL9/53 at grid reference ST 6477 6059 (point F on the decision plan) (referred to as "Existing FP 2").
- (c) The full width of a section of Public Footpath CL9/26 commencing from a junction with A39 Bath Road at grid reference ST 6496 6015

(point S on the decision plan) and proceeding in a generally southerly direction for approximately 2 metres to a junction with Public Footpath CL9/27 at grid reference ST 6496 6015 (point N on the decision plan) (referred to as "Existing FP 3").

- (d) The full width of a section of Public Footpath CL9/27 commencing from a junction with Public Footpath CL9/26 at grid reference ST 6496 6015 (point N on the decision plan) and proceeding in a generally southwesterly direction for approximately 357 metres to grid reference ST 6474 5987 (point R on the decision plan) (referred to as "Existing FP 4").

6.3 The above descriptions are referred to collectively as the "Existing FPs".

6.4 Description of the Proposed Footpaths

- (a) A section of public footpath commencing from grid reference ST 6448 6014 (point A on the decision plan) and proceeding in a generally easterly direction for approximately 221 metres to a junction with Public Footpath CL9/37 at grid reference ST 6470 6014 (point G on the decision plan) and continuing in a generally easterly direction for approximately 100 metres to a junction with a new public footpath at grid reference ST 6480 6013 (point J on the decision plan) and turning in a generally northeasterly direction for approximately 148 metres to grid reference ST 6489 6025 (point D on the decision plan) (referred to as "Proposed FP 1").
- (b) A section of public footpath commencing from a junction with a new footpath at grid reference ST 6482 6009 (point P on the decision plan) and proceeding in a generally northwesterly direction for approximately 20 metres across A39 Bath Road to grid reference ST 6480 6010 (point K on the decision plan) and proceeding in a generally northerly direction for approximately 28 metres to a junction with a footpath at grid reference ST 6480 6013 (point J on the decision plan) and turning in a generally north-northwesterly direction for approximately 505 metres to a junction with Public Bridleway CL9/53 at grid reference ST 6466 6057 (point L on the decision plan) (referred to as "Proposed FP 2").
- (c) A section of public footpath commencing from a junction with A39 Bath Road at grid reference ST 6497 6016 (point M on the decision plan) and proceeding in a generally southwesterly direction for approximately 4 metres to a junction with Public Footpath CL9/27 at grid reference ST 6496 6015 (point N on the decision plan) referred to as "Proposed FP 3").
- (d) A section of public footpath commencing from a junction with Public Footpath CL9/26 at grid reference ST 6496 6015 (point N on the decision plan) proceeding in a generally west-southwesterly direction for approximately 159 metres to a junction with a new public footpath at grid reference ST 6482 6009 (Point P on the decision plan) and turning in a generally south-southwesterly direction for approximately 236 to grid reference ST 6474 5987 (point R on the decision plan). (referred to as "Proposed FP 4").

- 6.5 The above descriptions are referred to collectively as the "Proposed FPs" and will each be 2 metres wide.
- 6.6 **Limitations and Conditions** - The Proposed FPs will be created without any limitations or conditions. Authorisation of a Bristol style field gate and pedestrian kissing gates is proposed under section 147 of the Act at field boundaries to prevent the ingress and egress of animals.

7. Consultations

- 7.1 Affected landowners, Farmborough Parish Council, national and local user groups, the Ward Councillors and statutory undertakers were all consulted regarding Proposed FPs 1 and 2 for a period of four weeks ("the Consultation Period"). Additionally, site notices were erected at either end of the sections of the Existing FPs to be diverted and at either end of the Proposed FPs and on the Authority's website to seek the views of members of the public.
- 7.2 The B&NES area Ramblers representative commented regarding accessibility and connectivity with other FPs and that the proposals increased the necessity to walk on the busy A39 Bath which has no footway, only grass verges.
- 7.3 A comment was received from a member of the public stating '*These proposals seem reasonable and reflect current practice*'.
- 7.4 Further discussion took place with the applicant who agreed to add a diversion relating to Existing FPs 2, 3 & 4 on the south side of A39 Bath Road. This provides for an extended Proposed FP 2 and Proposed FPs 3 & 4. The Ramblers representative agreed this alleviated his concerns. A further two week consultation was held regarding Proposed FPs 2, 3 & 4 on the south side of A39.
- 7.5 In response to both consultations, a number of statutory undertakers stated that their plant would not be affected. Bristol Water advised that they have plant in the vicinity of Proposed FP 4. However, no excavation is intended here and usual highway rights would be provided under the Proposed FP 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 paths in the interests of the public and/or of the owner, lessee or occupier of the land crossed by the path:** Existing FP 1 runs through farm buildings vital to the farm business. Existing FP 2 runs close to the farmhouse and surrounds and over Conygre Brook which is not accessible to the public on the definitive line. Existing FP 2 connects to

A39 Bath Road in a field where cattle are upset by the fast traffic if there is a gap in the hedge. These issues are alleviated by the Proposed FPs. Proposed FPs 2, 3 & 4 will improve connectivity to FP CL9/37 and to footpaths on the south of A39 and reduces the necessity for the public to cross the middle of the field to the south of A39 Bath. The diversions are proposed in the interest of the landowner as they are beneficial for farming purposes. 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:** Existing FP 1 and Existing FP 4 and Proposed FP 1 and Proposed FP 4 respectively start and finish at the same point on the same path. Existing and Proposed FP 2 both meet A39 Bath Road to the south and join Public Bridleway CL9/53 to the north. There is an extension to Proposed FP 2 which crosses A39 to join Proposed FP4. The new termination points are substantially as convenient to the public. Proposed FP 3 is a diversion of an extra 2 metres to join the A39 Bath Road where the existing kissing gate is in situ and is substantially as convenient to the public. 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 Proposed FPs are all a similar length to the Existing FPs, taking into account the nature of walking in the vicinity. Proposed FP 1 is easier to navigate as it avoids a deep ditch on Existing FP1 (between points B and C on the Decision Plan). Proposed FP 2 is easier to navigate as it follows a farm track which is an obvious route and avoids the farmhouse and winding through garden/field boundaries. The southerly extension to Proposed FP 2 across the A39 to join Proposed FP 4 improves connectivity and improves the difficulty of walking from one FP to another. Proposed FPs 3 & 4 are similar surfaces so difficulty of walking is not affected. Connectivity is improved and the public can avoid walking on A39 Bath Road. The purpose for the Existing FPs is presumed to be mainly for leisure walking. The nature of the Proposed FPs within the wider rights of way network is such as would be expected by a rights of way user for leisure purposes. 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 Paths:** The Existing and Proposed FPs run over similar topography; the diversions will therefore have little impact

on public enjoyment of the paths as a whole. Not having to walk on A39 Bath Road will make walking over the wider area more enjoyable; 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 FPs will improve farming purposes and there are no adverse effects on other land served by the Existing FPs or on land affected by the Proposed FPs; 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 land affected by Proposed FPs 2, 3 and 4 is owned by the Applicant so there is no adverse effect with regard to compensation. Proposed FP 1 is owned by the Applicant and an adjoining 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 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. avoiding a steep ditch, improved crossing of the brook, better connectivity with other FPs and inclusion of pedestrian gates rather than stiles at field boundaries)
 - Action 4.4 - *"Identify road safety improvements that enable increased use of routes"* (i.e. providing an alternative crossing on A39 Bath Road to get from one FP to another)
 - Action 4.6 - *"Identify gaps in the wider recreational network that will improve accessibility and connectivity"* (i.e. improved connectivity and alternative choices between FPs from the north to the south of A39 Bath Road and vice versa).
- 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 FPs are intended to be beneficial to farming purposes. The diversion will have no effect on forestry or biodiversity as the routes run over similar topography. Path users with mobility, hearing and sight impairments will benefit from improved connectivity. Avoidance of a steep ditch and improved surfaces will be more commodious to use by those with mobility and sight impairments.
- 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 is improved between the FPs on the north and the south of A39 Bath Road, i.e. between Proposed FP 2/FP CL9/37 and Proposed FPs 3 and 4. Proposed FP 1 has no impact on connectivity. Proposed FP 2 joins Public Bridleway CL9/53 approximately 112 metres to the west, which would decrease the distance walked if going west, but increasing the distance walked if heading east to Public Bridleways CL9/48 or CL9/49. However, the junction is within the same field and the distance is considered negligible when considering the likely reason for walking these routes is for leisure purposes. Connectivity to other FPs at the southern end of Proposed FP 2 is improved.
- 8.16 Path users with mobility and sight impairments will benefit from a more open route on Proposed FPs 1 and 2, avoiding the farm buildings where farm machinery is often in use, a steep ditch and the farmhouse area. Proposed FP 2 will follow an established farm track which is clearly visible, some of which is a concrete or more solid surface. Path users with mobility, hearing and sight impairments will benefit from safer and clearer access from Proposed FPs 3 and 4 to FPs CL9/37 and proposed FP 2 as they will no longer be required to walk along A39 Bath Road to get to these routes. There is a similar benefit from safer and clearer access from FP CL9/37 or Proposed FP 2 to FP CL9/26 avoiding walking along the busy A39 Bath Road. The wooden stile on FP CL9/27 (at point R) is to be replaced with a metal kissing gate, thereby improving access for those with mobility and sight impairment. The proposed diversions have a neutral effect on those with other impairments.
- 8.17 Kissing gates will be authorised at field boundaries for stock control purposes but this is in keeping with the nature of the surrounding farmed area. There will be one Bristol gate across Proposed FP 2 for use by pedestrians but this will only be closed when necessary for stock control purposes. Authorisation of the gates is in keeping with the principles of 'Least Restrictive Access'.
- 8.18 There is a steep ditch on Existing FP 1 which will be avoided by Proposed FP1. The majority of the Proposed FPs are of similar gradients to the Existing FPs.
- 8.19 Maintenance of the Proposed FPs will be comparable with the Existing FPs. The landowner has agreed to maintain the bridge over the Conygre Brook on Proposed FP 2 (at point H).
- 8.20 Safety when crossing the A39 Bath Road has been improved by avoiding the necessity to walk along the busy A39 Bath road to get from FPs on the south to FPs on the north and vice versa. Safety has also been improved by avoiding the busy farm buildings at Existing FPs 1 and 2.
- 8.21 The Proposed FPs do not have any impact on width, status or features of interest.

8.22 It is considered that on balance the proposed diversions are 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 proposals are part of the ongoing management of the network and therefore contribute 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 proposals are 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 Footpaths CL9/26, CL9/27, CL9/36 and CL9/40 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: 18/12/2020

Craig Jackson

Team Manager - Highways Maintenance and Drainage

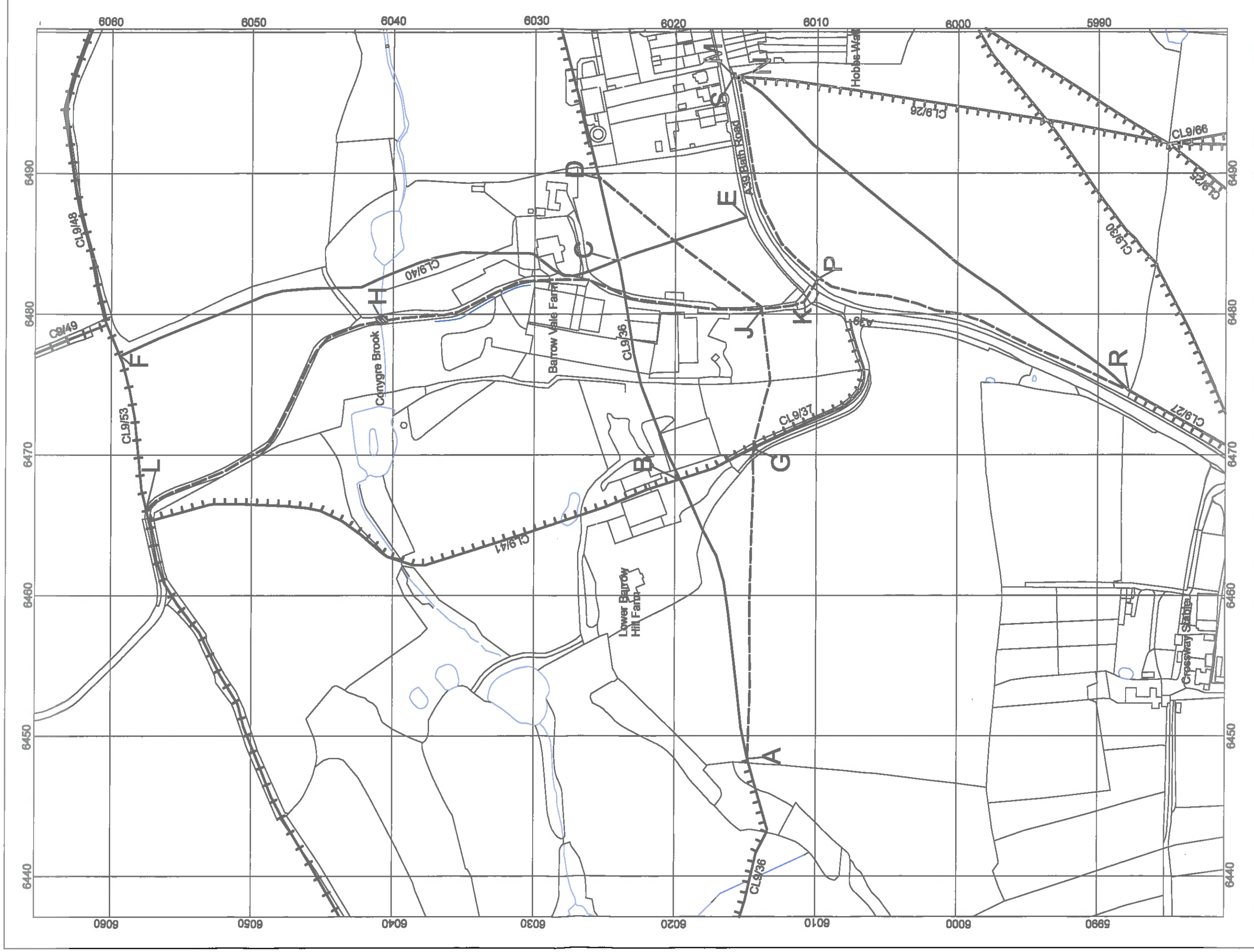
Appendix 1
The Decision Plan

Bridge H 

Public footpath to be created AGJD PKJL M N NPR
 Public footpath to be stopped up ABCD ECF S N R
 Unaffected public footpath |||||
 Unaffected public bridleway + + + + +



Scale: 1:2,500



DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of a section of Public Footpath CL9/36 commencing from grid reference ST 6448 6014 (point A on the decision plan) and proceeding in a generally east-northeasterly direction for approximately 206 metres to a junction with Public Footpath CL9/37 and Public Footpath CL9/41 at grid reference ST 6468 6019 (point B on the decision plan) and continuing in a generally east-northeasterly direction for approximately 162 metres to a junction with Public Footpath CL9/40 at grid reference ST 6483 6024 (Point C on the decision plan) and continuing in a generally east-northeasterly direction for approximately 60 metres to grid reference ST 6489 6025 (point D on the decision plan).

The full width of a section of Public Footpath CL9/40 commencing from a junction with A39 Bath Road at grid reference ST 6486 6014 (point E on the decision plan) and proceeding in a generally north-northwesterly direction for approximately 95 metres to a junction with Public Footpath CL9/36 at grid reference ST 6483 6024 (point C on the decision plan) and turning in a generally northerly direction for approximately 372 metres to a junction with Public Bridleway CL9/53 at grid reference ST 6477 6059 (point F on the decision plan).

The full width of a section of Public Footpath CL9/26 commencing from a junction with A39 Bath Road at grid reference ST 6496 6015 (point S on the decision plan) and proceeding in a generally southerly direction for approximately 2 metres to a junction with Public Footpath CL9/27 at grid reference ST 6496 6015 (point N on the decision plan).

The full width of a section of Public Footpath CL9/27 commencing from a junction with Public Footpath CL9/26 at grid reference ST 6496 6015 (point N on the decision plan) and proceeding in a generally southwesterly direction for approximately 357 metres to grid reference ST 6474 5987 (point R on the decision plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from grid reference ST 6448 6014 (point A on the decision plan) and proceeding in a generally easterly direction for approximately 221 metres to a junction with Public Footpath CL9/37 at grid reference ST 6470 6014 (point G on the decision plan) and continuing in a generally easterly direction for approximately 100 metres to a junction with a public footpath at grid reference ST 6480 6013 (point J on the decision plan) and turning in a generally

Appendix 2

northeasterly direction for approximately 148 metres to grid reference ST 6489 6025 (point D on the decision plan).

Width: 2 metres between grid reference ST 6448 6014 (point A on the decision plan) and grid reference ST 6489 6025 (point D on the

A section of public footpath commencing from a junction with a new footpath at grid reference ST 6482 6009 (point P on the decision plan) and proceeding in a generally northwesterly direction for approximately 20 metres across A39 Bath Road to grid reference ST 6480 6010 (point K on the decision plan) and proceeding in a generally northerly direction for approximately 28 metres to a junction with a footpath at grid reference ST6480 6013 (point J on the decision plan) and turning in a generally north-northwesterly direction for approximately 505 metres to a junction with Public Bridleway CL9/53 at grid reference ST 6466 6057 (point L on the decision plan).

Width: 2 metres between grid reference ST 6482 6009 (point P on the decision plan) and grid reference ST 6466 6057 (point L on the decision plan).

A section of public footpath commencing from a junction with A39 Bath Road at grid reference ST 6497 6016 (point M on the decision plan) and proceeding in a generally southwesterly direction for approximately 4 metres to a junction with Public Footpath CL9/27 at grid reference ST 6496 6015 (point N on the decision plan).

Width: 2 metres between grid reference ST 6497 6016 (point M on the decision plan) and grid reference ST 6496 6015 (point N on the decision plan).

A section of public footpath commencing from a junction with Public Footpath CL9/26 at grid reference ST 6496 6015 (point N on the decision plan) proceeding in a generally west-southwesterly direction for approximately 159 metres to a junction with a new public footpath at grid reference ST 6482 6009 (Point P on the decision plan) and turning in a generally south-southwesterly direction for approximately 236 to grid reference ST 6474 5987 (point R on the decision plan).

Width: 2 metres between grid reference ST 6496 6015 (point N on the decision plan) and grid reference ST 6474 5987 (point R on the decision plan).

PART 3
LIMITATIONS AND CONDITIONS

None.