

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath BA25/5 at Middle Twinhoe, Wellow. The landowner wishes to divert the public footpath away from a residential building and garden and onto the approximate 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 BA25/5 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 BA25/5 is recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956.

6.2 Description of the Route to be Diverted

The full width of a section of Public Footpath BA25/5 commencing from a junction with Public Footpath BA25/3 at grid reference ST 7517 5945 (point A on the decision plan) and proceeding in a generally southwesterly direction for approximately 65 metres to a field boundary at grid reference ST7512 5941 (point B on the decision plan) and continuing in a southwesterly generally direction for approximately 3 metres to grid reference ST 7512 5941 (point C on the decision plan) (referred to as “the Existing FP”)

6.3 Description of the Proposed Footpath

A section of public footpath commencing from a junction with public footpath BA25/3 at grid reference ST 7517 5945 (point A on the decision plan) and proceeding in a generally south southeasterly direction for approximately 4 metres to a field boundary at grid reference ST 7518 5945 (point D on the decision plan) and turning in a generally southwesterly direction for approximately 62 metres to grid reference ST 7513 5941 (point E on the decision plan) and turning in a generally westerly direction for approximately 7 metres to grid reference ST 7512 5941 (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 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, Wellow 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. 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:** The Existing FP runs through a residential garden close to the cottage. The Proposed FP will run parallel to the Existing FP but in an adjoining field. The diversion is proposed in the interest of the landowner to remove the route from his residential garden and improve privacy for the landowner. 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 and finish at the same points on the same path. 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, taking into account the nature of walking in the vicinity. Difficulty of walking and the purpose of the path are comparable and therefore not adversely affected. The Proposed FP is therefore not substantially less 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 Existing and Proposed FPs run over similar topography; the diversion will therefore have no adverse impact on public enjoyment of the path as a whole. Not having to walk through a residential garden may make walking 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 FP will run around one edge of a field and has no 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 proposal will have no adverse effect on the Authority achieving actions which are identified in the Rights of Way Improvement Plan's Statement of Actions. The public currently use a stile which will be replaced by a pedestrian gate at the field boundary, which will promote Action 4.3 - *"Identify and carry out improvements for people with mobility difficulties and visual impairments"*.
- 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 farming, forestry or biodiversity as the Proposed FP runs parallel with the Existing FP. Path users with mobility and sight impairments may benefit from avoiding a residential garden and from an additional kissing gate at the field boundary.
- 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 Path users with mobility and sight impairments may benefit from a more open route on the Proposed FP, rather than through a residential garden. The proposed diversion has a neutral effect on those with other impairments.
- 8.16 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. Authorisation of the gates is in keeping with the principles of 'Least Restrictive Access'.

8.17 The Proposed FP does not have any impact on connectivity, gradient, maintenance, safety, width, status or features of interest.

8.18 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

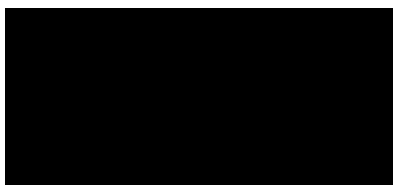
11.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposal is in compliance with the Public Path Order Policy.

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 BA25/5 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: 13/01/2021

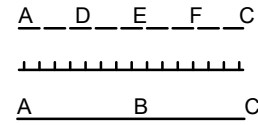
Craig Jackson

Team Manager - Highways Maintenance and Drainage

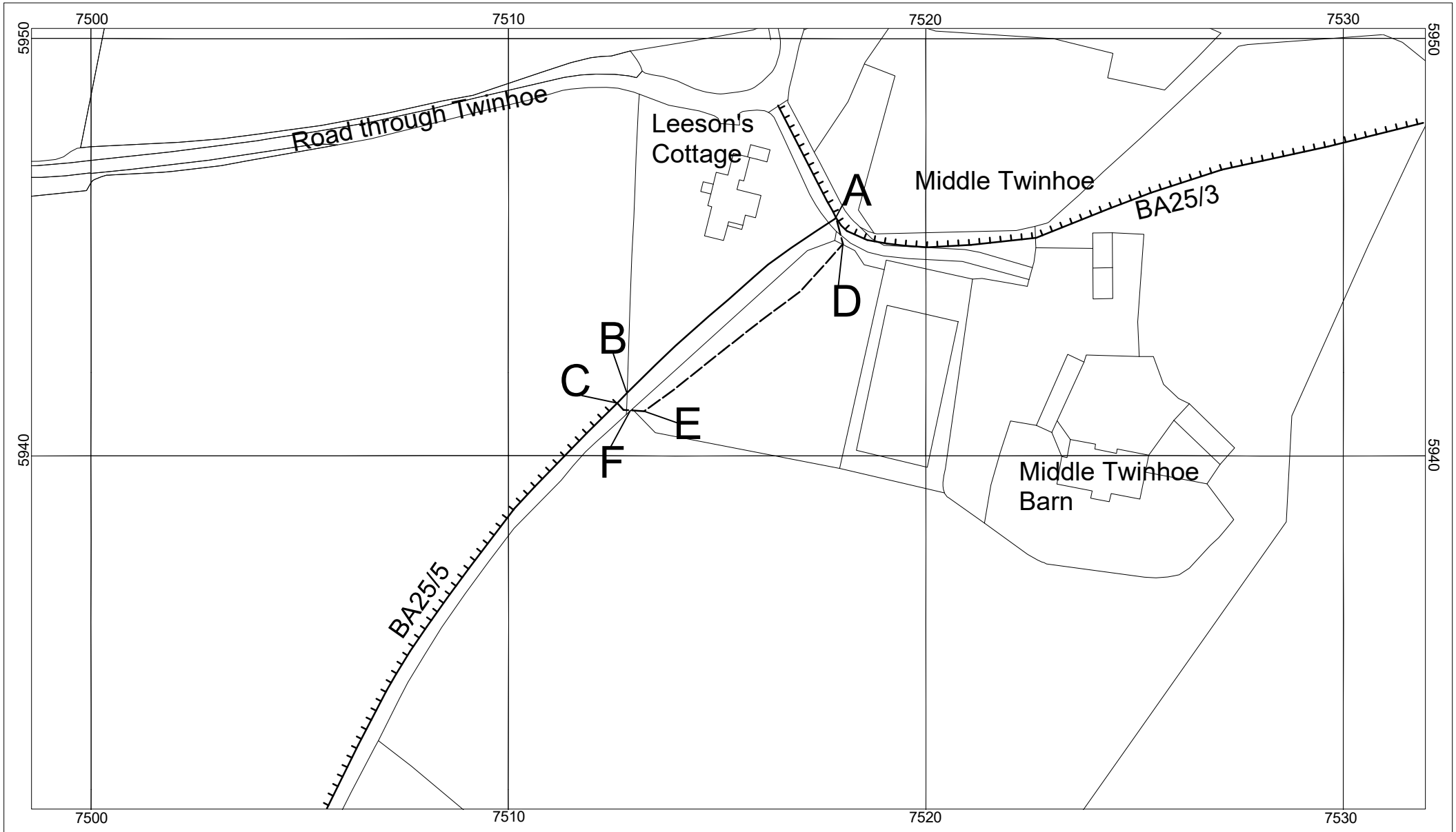
**Appendix 1
The Decision Plan**



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



Scale: 1:1,250



DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of a section of Public Footpath BA25/5 commencing from a junction with Public Footpath BA25/3 at grid reference ST 7517 5945 (point A on the decision plan) and proceeding in a generally southwesterly direction for approximately 65 metres to a field boundary at grid reference ST7512 5941 (point B on the decision plan) and continuing in a southwesterly generally direction for approximately 3 metres to grid reference ST 7512 5941 (point C on the decision plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from a junction with public footpath BA25/3 at grid reference ST 7517 5945 (point A on the decision plan) and proceeding in a generally south southeasterly direction for approximately 4 metres to a field boundary at grid reference ST 7518 5945 (point D on the decision plan) and turning in a generally southwesterly direction for approximately 62 metres to grid reference ST 7513 5941 (point E on the decision plan) and turning in a generally westerly direction for approximately 7 metres to grid reference ST 7512 5941 (point C on the decision plan).

Width: 2 metres between grid reference ST 7517 5945 (point A on the decision plan) and grid reference ST 7512 5941(point C on the decision plan).

PART 3

LIMITATIONS AND CONDITIONS

None.