

## **1. The Issue**

- 1.1 An application was been made to divert sections of Public Footpaths (FP) BA5/35, BA5/46 and BA5/45 at Bath Racecourse in the Parish of Charlcombe in order to divert the footpaths away from the Racetrack and provide routes which do not cross the Racetrack surface. An informal consultation was held and a total of 13 letters/emails were received from members of the public in opposition to the proposals. After consideration of the proposal and the consultation results, the Development Management Committee agreed on 16<sup>th</sup> January 2019 that the Authority should concurrently make a public path creation order under section 26 of the Highways Act 1980 creating FPs BA5/61, BA5/62, BA5/63, BA18/29, BA5/64, BA5/65 and BA5/66 and a public path extinguishment order under section 118 of the Highways Act 1980 extinguishing sections of FPs BA5/35, BA5/37, BA5/43, BA5/45 and BA5/46 ("the Orders") to remove sections of public footpaths from the Racetrack at Bath Racecourse and provide new FPs in their place. Five objections were received to the Orders. The Orders must therefore be referred back to the Team Manager - Highways Maintenance and Drainage to consider the matter in light of those objections. In order to proceed with the Orders they must be sent to the Secretary of State for Environment, Food & Rural Affairs for determination. The Authority must therefore decide whether to proceed with the Orders.

## **2. Recommendation**

- 2.1 That the Team Manager - Highways Maintenance and Drainage grants authorisation to forward the concurrent Public Path Creation Order and Public Path Extinguishment Order to the Secretary of State for Environment, Food & Rural Affairs for determination. The Orders will extinguish current public footpaths from the centre of the Racetrack and create new sections of public footpath around the perimeter of the Racetrack at Bath Racecourse as described in the Orders and shown on the Order Maps at Appendix 1.

## **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. Should an Order be confirmed, the New Footpaths will become maintainable at public expense.
- 3.2 Should the Team Manager – Highways Maintenance and Drainage decide to continue to support the Orders, then the Orders 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, which may be by holding a Public Inquiry, by arranging a hearing or by written representations.

#### **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 must consider the application in accordance with the principle of proportionality. The Authority must 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 statutory duty to ensure that all public rights of way are unobstructed and a discretionary power to make public path orders. When considering a proposal for a public path order, the Authority considers whether the proposals meet the requirements set out in the legislation (which is reproduced below).
- 5.2 The Authority, before making the public path creation order under section 26 of the Highways Act 1980 (“the Act”) was satisfied that there is a *need* for rights of way in the area. In reaching its decision, the Authority had regard to:
  - the extent to which the paths would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area,
  - the effect which the creation of the paths would have on the rights of persons interested in the land, account being taken of the provisions to compensation,
  - the effect which the creation of the paths would have on members of the public with protected characteristics under the Equality Act 2010,
  - the contents of the Rights of Way Improvement Plan,
  - the needs of agriculture and forestry and the keeping and breeding of horses,
  - and the desirability of conserving flora, fauna and geological and physiological features.
- 5.3 The Authority, before making the public path extinguishment order under section 118 of the Act was satisfied that it is expedient that the paths are stopped up on the ground that the footpaths are *not needed* for public use. Before confirming the order, the Secretary of State must consider (and is therefore considered in this report) that it is expedient to do so having regard to the extent to which it appears that the paths would, apart from the order, be likely to be used by the public and have regard to the effect which the extinguishment would have on the land served by the paths.

5.4 Where a creation order and extinguishment order is to be made concurrently s118(5) of the Act provides that, when considering the extent to which the extinguished paths would be likely to be used by the public, regard may be given to the extent to which the creation order would provide alternative paths. This means that consideration is firstly given to the creation order on its own merits, and when satisfied that it should be made, then the prospective creation order is taken into consideration when considering the criteria for the extinguishment order.

5.5 In addition to the legislative tests detailed above, the Authority considered the Authority's adopted Public Path Order Policy ("PPO Policy"). The PPO Policy sets out the criteria against which the Authority assesses any Public Path Order proposal and stresses that the Authority will seek to take a balanced view of the proposal against all the criteria as a whole.

5.6 The criteria are:

- Connectivity,
- Equalities Impact,
- Gaps and Gates,
- Gradients,
- Maintenance.
- Safety,
- Status,
- Width,
- Features of Interest.

5.7 The Authority must consider the effect on Climate Change.

## **6. Description of Public Footpaths to be created, Limitations and Conditions and Public Footpaths to be extinguished**

### **6.1 Public Footpaths to be Created**

#### **6.2 Public Footpath BA5/61**

A public footpath commencing from a junction with Lansdown Lane at grid reference ST 7269 6824 (point S on the Order Map) and proceeding in a generally north-northwesterly direction for approximately 6 metres to a junction with Public Footpath BA5/65 at grid reference ST 7269 6825 (point T on the Order Map) and turning in a generally north-northeasterly direction for approximately 154 metres to grid reference ST 7275 6838 (point U on the Order Map) and turning in a generally north-northwesterly direction for approximately 100 metres to a junction with Public Footpath BA5/66 at grid reference ST 7273 6847 (point V on the Order Map) and turning in a generally west-northwesterly direction for approximately 151 metres to a junction with Public Footpath BA5/35 at grid reference ST 7261 6856 (point G on the Order Map). Width: 2

metres between grid reference ST 7269 6824 (point S on the Order Map) and grid reference ST 7261 6856 (point G on the Order Map).

**6.3 Public Footpath BA5/62**

A public footpath commencing from a junction with Public Footpath BA5/36 at grid reference ST 7191 6891 (point H on the Order Map) and proceeding in a generally west-northwesterly direction for approximately 113 metres to a junction with Public Footpath BA5/63 at grid reference ST 7181 6897 (point K on the Order Map). Width: 2 metres between grid reference ST 7191 6891 (point H on the Order Map) and grid reference ST 7181 6897 (point K on the Order Map).

**6.4 Public Footpath BA5/63**

A public footpath commencing from a junction with Public Footpath BA5/43 at grid reference ST 7182 6898 (point J on the Order Map) and proceeding in a generally southwesterly direction for approximately 14 metres to a junction with Public Footpath BA5/62 at grid reference ST 7181 6897 (point K on the Order Map) and turning in a generally westerly direction for approximately 61 metres to a junction with Public Footpath BA18/29 at grid reference ST 7175 6896 (point L on the Order Map). Width: 2 metres between grid reference ST 7182 6898 (point J on the Order Map) and grid reference ST 7175 6896 (point L on the Order Map).

**6.5 Public Footpath BA18/29**

A public footpath commencing from a junction with Public Footpath BA5/63 at grid reference ST 7175 6896 (point L on the Order Map) and proceeding in a generally west-southwesterly direction for approximately 149 metres to a junction with public footpath BA5/64 at grid reference ST 7163 6889 (point M on the Order Map). Width: 2 metres between grid reference ST 7175 6896 (point L on the Order Map) and grid reference ST 7163 6889 (point M on the Order Map).

**6.6 Public Footpath BA5/64**

A public footpath commencing from a junction with Public Footpath BA18/29 at grid reference ST 7163 6889 (point M on the Order Map) and turning in a generally southerly direction for approximately 31 metres to grid reference ST 7162 6886 (point N on the Order Map) and turning in a generally west-southwesterly direction for approximately 594 metres to a junction with Public Footpath BA5/54 at grid reference ST 7114 6852 (point P on the Order Map). Width: 2 metres between grid reference ST 7163 6889 (point M on the Order Map) Order Map and grid reference ST 7114 6852 (point P on the Order Map).

**6.7 Public Footpath BA5/65**

A public footpath commencing from a junction with Public Footpath BA5/61 at grid reference ST 7269 6824 (point T on the Order Map) and proceeding in a generally north-northwesterly direction for approximately 294 metres to grid reference ST 7254 6850 (point R on the Order Map) and turning in a generally southwesterly direction for approximately 86 metres to grid reference ST 7248 6844 (point Q on the

Order Map) and turning in a generally west-northwesterly direction for approximately 730 metres to a junction with Public Footpath BA5/46 at grid reference ST 7181 6868 (point E on the Order Map). Width: 2 metres between grid reference ST 7269 6824 (point T on the Order Map) and grid reference ST 7181 6868 (point E on the Order Map).

6.8 Public Footpath BA5/66

A public footpath commencing from a junction with Public Footpath BA5/61 at grid reference ST 7273 6847 (point V on the Order Map) proceeding in a generally northeasterly direction for approximately 25 metres to a junction with Lansdown Road at grid reference ST 7275 6849 (point W on the Order Map). Width: 2 metres between grid reference ST 7273 6847 (point V on the Order Map) and grid reference ST 7275 6849 (point W on the Order Map).

6.9 There are no limitations or conditions. However, it is intended to install kissing gates under section 66 of the Act for public safety at junctions to Lansdown Lane and Lansdown Road.

6.10 These FPs are collectively referred to as the New FPs.

6.11 Public Footpaths to be extinguished

6.12 Public Footpath BA5/35

The full width of the section of Public Footpath BA5/35 commencing from a junction with Lansdown Lane at grid reference ST 7267 6819 (point F on the Order Map) and proceeding in a generally northerly direction for approximately 385 metres to grid reference ST 7261 6856 (point G on the Order Map).

6.13 Public Footpath BA5/37

The full width of the section of Public Footpath BA5/37 commencing from grid reference ST 7191 6891 (point H on the Order Map) and proceeding in a generally west-northwesterly direction for approximately 139 metres to a junction with Public Footpath BA5/43 and Public Footpath BA5/45 at grid reference ST 7178 6897 (point A on the Order Map).

6.14 Public Footpath BA5/43

The full width of the section of Public Footpath BA5/43 commencing from grid reference ST 7182 6898 (point J on the Order Map) and proceeding in a generally westerly direction for approximately 41 metres to a junction with Public Footpath BA5/45 and Public Footpath BA5/37 at grid reference ST 7178 6897 (point A on the Order Map).

6.15 Public Footpath BA5/45

The full width of Public Footpath BA5/45 commencing from a junction with Public Footpath BA5/43 and Public Footpath BA5/37 at grid reference ST 7178 6897 (point A on the Order Map) and proceeding in a generally west-southwesterly direction for approximately 137 metres to grid reference ST 7166 6891 (point B on the Order Map) and turning in a

generally south-southwesterly direction for approximately 592 metres to a junction with Public Footpath BA5/46 and Public Footpath BA5/47 at grid reference ST 7139 6839 (point C on the Order Map).

#### 6.16 Public Footpath BA5/46

The full width of the section of Public Footpath BA5/46 commencing from a junction with Public Footpath BA5/36 and Public Footpath BA5/37 at grid reference ST 7210 6883 (point D on the Order Map) and proceeding in a generally west-southwesterly direction for approximately 321 metres to grid reference ST 7181 6868 (point E on the Order Map).

6.17 These FPs are collectively referred to as the Existing FPs.

### **7. Rationale**

7.1 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.

7.2 It is recommended that the remaining tests outlined in section 5 above are considered in relation to the creation order, in turn. Issues raised during consultation are also addressed below. The various tests in relation to the extinguishment order will then be considered.

### **Creation Order**

#### **7.3 The Authority must be satisfied that there is a need for a right of way in the area.**

The nature of use of the FPs in this area is considered to primarily be two-fold; either for longer-distance walkers (e.g. walkers using the adjacent Cotswold Way (a 100 mile National Trail which runs between Bath and Chipping Campden) or the large network of footpaths over the southern end of the Cotswolds) or for shorter-distance leisure walkers (e.g. local walkers wanting to enjoy the views (especially the views of Bath from nearby Prospect stile), skylarks and an easy flat walk which may include residents or tourists from nearby Bath or dog-walkers. The FPs in the area are described as 'a network' as they do not particularly go from A to B and are restricted by the steep contours of the area surrounding the Racecourse. The Authority promotes two FPs in the area. One as part of the long distance promoted walk (Cotswold Way National Trail) and one as a shorter 6 mile walk (Cotswold Way Circular Walk). The purpose of use for long- or short- distance is therefore considered to be for pleasure rather than utility. The Cotswold Way is not affected by the proposals. The Cotswold Way Circular Walk starts from Lansdown Park & Ride, heading along the 'busy road' (Lansdown Road) towards FP BA5/36 just past the public house, then using BA5/46 to BA5/34. There is therefore a need for rights of way in the area.

- 7.4 The Authority must have regard to the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area.
- 7.5 Convenience of a substantial section of the public - Matters such as length, difficulty of walking and the purpose of the path pertain to the convenience to the public.
- 7.6 Length – The total length of the Existing FPs is approximately 1615 metres. The total length of the New FPs is approximately 2508 metres. The total length of recorded public footpath would therefore increase by approximately 893 metres although this does not necessarily mean that individual journeys from start point to destination are increased. Comparative calculations have been made with regard to likely routes taken by walkers from each direction. The comparative calculations show that the majority of the proposed routes are less distance than using the existing routes. The proposed route from north to south is the only route which increases the distance from one point to another. However, the distance of recorded rights of way is increased thereby offering more flexibility and availability of walking than currently available.
- 7.7 Difficulty of walking - The terrain of the Existing FPs and New FPs is predominantly over open grass and there is therefore no change to the difficulty of walking. There is one short incline towards the eastern end of FP BA5/65. One objector asserted that this is not as suitable for people with mobility limitations. However, it is considered that when taking account of the nature and terrain of the area as a whole the surface is acceptable for people with mobility limitations.
- 7.8 Purpose of the paths – The nature of use of the FPs in this area is stated in paragraph 7.3. Individual objectors have stated that there is less flexibility with the proposed routes. However, it has been noted that many of the routes that the objectors use are not public footpaths but ‘customary paths’ or over any part of “open space” of the Racecourse and that their concern is that they will only be able to walk on public footpaths, thus reducing their flexibility. However, it should be noted that the public may be trespassing if they walk on private land without permission and this is the situation whether the proposals go ahead or not. Customary paths which are not recorded as public rights of way or generally walking randomly cannot be taken into account in the proposal. Any comparison is to be made between Existing FPs and New FPs, as customary paths cannot be considered a permanent public amenity. It is considered that providing a further approximately 893 metres more recorded length of public footpath will add to public amenity rather than detract from it. The New FPs provide better connectivity for long distance walkers.
- 7.9 Enjoyment of a substantial section of the public - The New FPs remove the walker from the Racetrack but are still within Bath Racecourse site. Enjoyment of the wildlife (e.g. skylarks) or grassland is therefore not affected by the Proposals. There is no change to ‘Prospect Stile’ or

views over Bath. FP BA5/64 provides enhanced views to the west over the Severn Estuary and the Welsh Mountains beyond on a clear day and is closer to the earthwork and tumuli to the northwest. The New FPs provide a circular route which may add to the enjoyment of the public including those walking dogs. Increasing the length of recorded FPs will provide more possibilities for the public to enjoy the area. One Objector stated that there will be fumes associated with traffic on Lansdown Lane. However, FP BA5/61 is separated from Lansdown Lane by a dry stone wall and verge, rather than running immediately contiguous with the road. Lansdown Lane has not been identified as requiring monitoring as part of the Council's Air Quality Annual Status Report. FP BA5/65 provides a route to the south of the Racetrack providing an alternative to walking over the Golf Course to the north of Bath Racecourse's buildings. There are views towards Bath provided by FP BA5/65. The nature of the FPs mean it is likely that the public are walking for pleasure and public enjoyment of the New FPs as a whole should be enhanced.

7.10 Convenience of persons resident in the area - Bath Racecourse is not in a densely populated area and the Existing FPs do not provide direct routes to shops or workplaces. Most walkers appear to be recreational walkers. It is therefore considered that there will be no adverse effect on the convenience of persons resident in the area.

7.11 Summary The length of the recorded FPs will be increased and this may be seen as a benefit if a walker wishes to enjoy the amenity of the area and is not using the FPs to get from 'A to B' by the quickest route. The New FPs will remove the walker from the Racetrack to traverse the perimeter of the Racetrack without changing the difficulty or purpose of the walk; provide better links with other FPs; provide a choice of walking to the south of the Racetrack or to the north via the golf course and provide the option of a circular walk. Bath Racecourse has advised that the New FPs will be unobstructed by any barriers including during racing events. The New FPs will therefore add to the convenience or enjoyment of a substantial section of the public, and have no adverse effect on the convenience of persons resident in the area. This test should therefore be considered to have been met.

7.12 **The Authority must have regard to the effect which the creation of the paths would have on the rights of persons interested in the land, account being taken of the provisions to compensation.**

7.13 FPs BA5/35, BA5/45 and BA5/46 currently cross the Racetrack which causes management problems and safety issues for the Landowner during Race Days. The landowner wishes to retain plastic safety barriers across FPs BA5/35, BA5/45 and BA5/46 throughout the year which creates obstructions to the Existing FPs. The definitive line of FP BA5/45 runs through Racecourse fencing in the vicinity of the stables to the north of the site. An alternative route (a section of FP BA5/64 and BA18/29) has been set out which has been used by the public for a number of years and the landowner wishes to formalise this arrangement. FPs BA5/63 and BA5/62 are to be realigned to follow the routes already in use. The landowner has asked for the Existing FPs to



run outside the vicinity of the Racetrack in order to improve management of the Racetrack throughout the year, improve safety on race days and align the legal route with what is currently walked. There is no adverse effect on land affected by the New FPs with regard to compensation as the Existing and New FPs are all owned by the Applicant who supports the proposals. This test should therefore be considered to have been met.

**7.14 The Authority must have regard to the effect which the creation of the paths would have on members of the public with protected characteristics under the Equality Act 2010.**

7.15 The following will provide a positive impact for those path users with visual, hearing or mobility impairments: providing routes around the perimeter of the Racetrack rather than over the Racetrack; pedestrian kissing gates will be erected on the boundary of Bath Racecourse with Lansdown Road and Lansdown Lane for safety reasons; re-siting the junction of FP BA5/35 with Lansdown Lane (to point S on the Creation Order Map) will provide improved visibility when crossing to FP BA5/57 as it moves the junction away from a bend in the road and avoids the need to walk along Lansdown Lane; the additional FP BA5/66 onto Lansdown Road provides improved connectivity with FPs BA5/15 and BA5/18 ensuring walkers will not have to walk along Lansdown Road.

7.16 There is a shallow gradient on a short section of FP BA5/65 towards its eastern end. It is considered that this will be an acceptable gradient when taking the nature and terrain of the whole area into consideration. All other Existing and New FPs are on a level surface.

7.17 The proposal has a neutral effect on those with other protected characteristics.

**7.18 The Authority must have regard to the contents of the Rights of Way Improvement Plan.**

7.19 The proposal would 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. connectivity with other FPs)
- Action 4.4 - *"Identify road safety improvements that enable increased use of routes"* (i.e. improved visibility when crossing of Lansdown Lane and less distance required to be walked along Lansdown Road between FPs)
- Action 4.6 - *"Identify gaps in the wider recreational network that will improve accessibility and connectivity"* (i.e. improved connectivity between FPs and providing an alternative route to the south of the Racetrack)

- 7.20 It is therefore considered that the proposal contributes to the ethos of the Rights of Way Improvement Plan.
- 7.21 The Authority must have regard to the needs of agriculture and forestry and the keeping and breeding of horses.**
- 7.22 Comments and objections were received before the Orders were made regarding inadequate fencing between the Racecourse and adjacent farmland. FP BA5/64 runs alongside this boundary. Fencing has now been erected along the boundary ensuring this is no longer an issue. The proposal will have a neutral effect on forestry. The proposal is designed to improve the safety of the public, horses and their riders on event days; this test should therefore be considered to have been met.
- 7.23 The Authority must have regard to the desirability of conserving flora, fauna and geological and physiological features.**
- 7.24 Objections have been raised regarding the condition of the surface of the New FPs, i.e. that they are muddier than the Existing FPs. No evidence of this has been seen. It is considered that the New FPs are over similar terrain to the Existing FPs. If the new FPs are better signposted and easier to follow the conservation of flora, fauna, geological or physiological features may be improved because areas of the Racecourse will not be walked on.
- 7.25 The effect of the New FPs on the additional criteria identified in the Authority's PPO Policy; namely, Connectivity, Equalities Impact, Gaps and Gates, Gradients, Maintenance, Safety, Status, Width and Features of Interest**
- 7.26 Connectivity – FP BA5/61 improves connectivity to the east by moving the junction closer to FP BA5/57. Improved connectivity to the north is provided by FP BA5/66 creating a junction closer to FPs BA5/15 and BA5/18. FPs BA5/64/BA18/29 provides improved connectivity from the west to the north. FP BA5/65 provides improved connectivity from the south to the east.
- 7.27 Equalities Impact - Please see paragraphs 7.15 – 7.17.
- 7.28 Gaps & Gates - FPs BA5/61 and BA5/66 cross field boundaries. It is intended to install kissing gates under section 66 of the Act for public safety at Racecourse boundaries. Authorisation of the gates is in keeping with the principles of 'Least Restrictive Access'. The New FPs will be unimpeded by Racetrack barriers.
- 7.29 Maintenance - The whole of Bath Racecourse area is maintained by Bath Racecourse. Although it is proposed to increase the length of recorded FP it is considered that the proposals will have a negligible effect on maintenance. Signage will be looked at and improved whether the changes are made or not.

- 7.30 Safety - The Applicant is concerned with safety of the public and of horses and riders on the Existing FPs on Race Days or other organised events. Diverting the routes to the perimeter of the grounds will avert safety issues on days when events are taking place as it will be safer to walk around the perimeter than to walk across the Racetrack. There will be a neutral effect on safety on the New FPs at times when there are no events taking place. FPs BA5/62 and BA5/37 run across the edge of the golf course and objectors have commented on the safety of walking this section. However, FP BA5/37 already traverses the golf course, but currently is obstructed by some fencing. The change will direct the public onto a path already in existence and already in use. One objector is concerned about a reduction of safety on the section of FP BA5/61 parallel with Lansdown Lane. However, there is a dry stone wall and verge between the New FP and the highway and this is therefore not considered an issue.
- 7.31 An objector suggests the junction of FP BA5/65 with Lansdown Lane will not be safer. However, it is considered that the new junction will improve safety as it is further from the bend in the road and directly opposite FP BA5/57.
- 7.32 FP BA5/66 will provide a new junction with Lansdown Road opposite FPs BA5/15 and BA5/18. Walkers will not have to use Lansdown Road to get from one FP to the other, thereby improving safety.
- 7.33 Width – The Existing FPs have no recorded width; it is therefore assumed that they are wide enough for two people to pass comfortably, which the Authority considered to be a width of 1.8m. The New FPs will be 2.0m wide throughout which provides an improvement to the available width. Objectors have suggested that the new FPs will restrict the width of walking which is not the case. It suggests the objectors are not comparing the New FPs with the Existing FPs but comparing with walking randomly over Bath Racecourse.
- 7.34 The Proposals have no impact on Status as all affected routes are public footpaths.
- 7.35 Features of Interest – FP BA5/64 provides improved views to the west over the River Severn and the Welsh Hills and is closer to the Earthwork, Tumuli and Pillow Mound in the adjoining field. FP BA5/65 provides an improved view to the south over Bath.
- 7.36 It is considered that on balance the New FPs are in accordance with the Policy.

### **Extinguishment Order**

- 7.37 Where a creation order and extinguishment order is to be made concurrently s118(5) of the Act provides that, when considering the extent to which the extinguished paths would be likely to be used by the public, regard may be given to the extent to which the creation order

would provide alternative paths. It is recommended that the various tests in relation to the Extinguishment Order are considered in turn:

- 7.38 The Authority must be satisfied that it is expedient that the paths are stopped up on the ground that the footpaths are not needed for public use.
- 7.39 It is considered that the creation order will provide suitable alternative paths to the extent that the Existing FPs will not be needed for use by the public.
- 7.40 **Before confirming the order the Secretary of State must consider that it is expedient to do so having regard to the extent to which it appears that the paths would, apart from the order, be likely to be used by the public.**
- 7.41 It is considered that the creation order will provide improved routes to the extent that the existing FPs will become unlikely to be used by the public.
- 7.42 **Before confirming the order the Authority (Secretary of State) must consider that it is expedient to do so having regard to the extent to which it appears that the effect the extinguishment would have on the land served by the paths.**
- 7.43 The Existing FPs do not provide the means of access for the landowner to any parcel of their land and, in any case, the landowner supports the proposals which will not therefore have a detrimental effect on the land served by the FPs.
- 7.44 **The effect the extinguishment will have on the Authority's PPO Policy.**
- 7.45 Paragraph 2.5 of the Authority's PPO Policy states that; *"The Authority does not generally support applications for extinguishment Orders unless they are part of a wider package with compensating public benefit"* and paragraph 2.2 states that *"the Council will seek to enhance the network whenever possible by improvement to the current route and network"*.
- 7.46 It is considered that the benefits of the New FPs outlined in paragraphs 7.1 to 7.35 above will enhance the FP network by adding improved routes and therefore complies with the Authority's Public Path Order Policy.
- 7.47 It is therefore considered on balance that extinguishment of the Existing FPs is in accordance with the Policy when considered in the context of the whole package and that the Existing FPs are no longer needed for public use.

## **8. Other Options Considered**

- 8.1 It is an option to not go forward with the proposed Creation and Extinguishment Orders. Bath Racecourse would then be required to open up the routes that are currently obstructed. However, this option would not deliver any improvements for the public and is therefore not recommended.

## **9. Consultations**

- 9.1 Affected landowners, Charlcombe Parish Council, national and local user groups, Natural England, the Ward Councillors and statutory consultees were all consulted about the proposed diversion for a period of six weeks. Additionally site notices were erected at each end of the proposed diversions and on the Authority's website to seek the views of members of the public.
- 9.2 In response to the consultation, a number of statutory undertakers stated that their plant would not be affected. British Telecommunications plc advised they had apparatus running across the area but did not object to the proposals providing their rights were maintained. These rights are therefore preserved in the Extinguishment Order.
- 9.3 Charlcombe Parish Council (which covers the whole of the original consultation site) give their full support to the proposals, stating that the proposals are *"eminently sensible and will improve the overall layout and connectivity of the paths whilst at the same time enhancing safety on race days and safety when crossing Lansdown Lane."*
- 9.4 A representative from North Stoke Parish Meeting (which is adjacent to the original consultation site) was concerned with the boundary fencing. This issue has now been resolved.
- 9.5 Cotswold Voluntary Wardens Parish Warden (in the parish of Charlcombe) responded, saying *"This proposal will regularise those routes and make it clearer for people who want to walk the legal paths to do so without the uncertainty of crossing Racecourse barriers"*. The overall response was – *"At last, I am pleased to see these proposals materialise in a way that will lead to better clarity for all concerned and safer access, without limiting much of the activity that people already do. I hope that these proposals can be given whole-hearted support to enable progress as quickly as possible."*
- 9.6 The local Ramblers representative stated that he supported the Cotswold Wardens views and *"On behalf of Ramblers I have no objections and hope that these proposed changes can be effected"*.
- 9.7 A total of 13 letters/emails were received from members of the public; part in opposition to the proposals and part in support. The Applicant

was further consulted and the proposal was amended before being considered by the Development Management Committee for a decision.

9.8 Five letters/emails were received from members of the public in opposition to the Orders.

9.9 Individual's objections are summarised below, covering distance, safety, environment, views/enjoyment and criteria for changing the routes:

Safety - Will not improve public safety (3 respondents) as cars gather speed from Lansdown Lane towards Lansdown Road. Walkers and dogs may stray onto track or onto Lansdown Lane. Young children may be more at risk closer to Lansdown Lane. Increases risk of dogs getting under a kissing gate into busy road. Risk of being hit by a golf ball on the Golf Course (4 respondents) and conflict with Racecourse traffic.

Environment/Difficulty of walking - FP BA5/65 is boggy for most of the year. Doesn't want to walk close to the road. No one will walk around the edge on FP BA5/61. Not as accessible. Increased exposure to air pollutants.

Views/Enjoyment – Wish to enjoy the openness and fresh air that the Racecourse provides/enjoy the wide open space (2 respondents). Disenfranchises citizens from access to open green space. Seeing wildlife is not the same if only allowed to walk on the periphery. Not as enjoyable (4 respondents). Doesn't wish to walk/run near busy roads.

Criteria for changing the routes – just close the FPs on Race Days (3 respondents). Proposal is unnecessary (2 respondents). Walkers don't cause damage. Not proportionate or reasonable.

## **10. Risk Management**

10.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Authority's decision making risk management guidance.

## **11. Conclusion**

11.1 The Orders will extinguish current public footpaths from the centre of the Racetrack and create new sections of public footpath around the perimeter of the Racetrack at Bath Racecourse as described in the Orders and shown on the Order Maps at Appendix 1.

11.2 It appears that the relevant statutory tests for making the Extinguishment and Creation Orders have been met and that the proposals are in compliance with the Public Path Order Policy.

11.3 In order to progress the Orders, as they have been opposed, the concurrent Public Path Creation Order and Public Path Extinguishment Order must be forwarded to the Secretary of State for Environment, Food & Rural Affairs for determination as to whether the Orders are confirmed.

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## AUTHORISATION

Under the authorisation granted by the Council on 10 May 2018, the concurrent Public Path Creation Order and Public Path Extinguishment Order attached at Appendix 1 will be forwarded to the Secretary of State for Environment, Food & Rural Affairs for determination as to whether the Orders are confirmed.



Craig Jackson

Team Manager - Highways Maintenance and Drainage

Dated: 23/07/19.





## APPENDIX 1



**PUBLIC PATH CREATION ORDER**

**HIGHWAYS ACT 1980**

**BATH AND NORTH EAST SOMERSET COUNCIL**

**BATH AND NORTH EAST SOMERSET COUNCIL  
(PUBLIC FOOTPATHS, BATH RACECOURSE, CHARLCOMBE  
AND NORTH STOKE) PUBLIC PATH CREATION ORDER 2019**

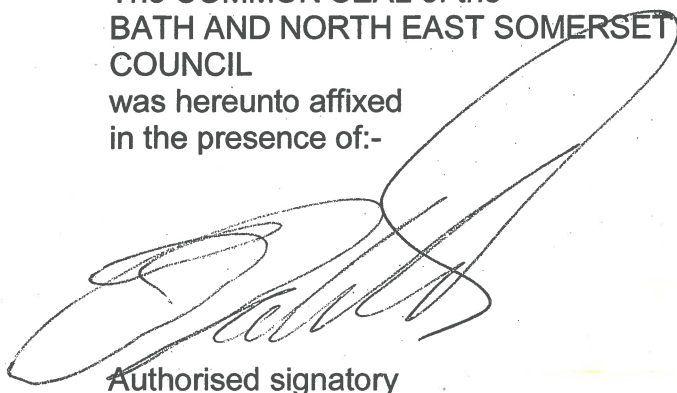
This Order is made by Bath and North East Somerset Council ("the authority") under section 26 of the Highways Act 1980 ("the 1980 Act") because it appears to the authority that, having regard to the matters set out in section 26(1), there is a need for public footpaths over the land to which this order relates, and that it is expedient that the paths should be created.

**BY THIS ORDER:**

1. There shall be at the end of 49 days from the date of confirmation of this order public footpaths over the land at Bath Racecourse, Charlcombe and North Stoke, described in Part 1 of the Schedule to this order and shown by bold broken lines on the map attached to this order.
2. The rights conferred on the public under this order shall be subject to the limitations and conditions set out in Part 2 of the Schedule.

Given under the Common Seal of the Bath and North East Somerset Council on the 16<sup>th</sup> day of May 2019.

The COMMON SEAL of the  
BATH AND NORTH EAST SOMERSET  
COUNCIL  
was hereunto affixed  
in the presence of:-



Authorised signatory



In pursuance of its powers conferred by Schedule 6 to the Highways Act 1980, the authority hereby confirms the foregoing order

The COMMON SEAL of the  
BATH AND NORTH EAST SOMERSET  
COUNCIL

was hereunto affixed

this            day of            20

in the presence of:-

## **SCHEDULE**

### **PART 1**

#### **DESCRIPTION OF LAND**

##### **Public Footpath BA5/61**

A public footpath commencing from a junction with Lansdown Lane at grid reference ST 7269 6824 (point S on the Order Map) and proceeding in a generally north-northwesterly direction for approximately 6 metres to a junction with Public Footpath BA5/65 at grid reference ST 7269 6825 (point T on the Order Map) and turning in a generally north-northeasterly direction for approximately 154 metres to grid reference ST 7275 6838 (point U on the Order Map) and turning in a generally north-northwesterly direction for approximately 100 metres to a junction with Public Footpath BA5/66 at grid reference ST 7273 6847 (point V on the Order Map) and turning in a generally west-northwesterly direction for approximately 151 metres to a junction with Public Footpath BA5/35 at grid reference ST 7261 6856 (point G on the Order Map).

Width: 2 metres between grid reference ST 7269 6824 (point S on the Order Map) and grid reference ST 7261 6856 (point G on the Order Map).

##### **Public Footpath BA5/62**

A public footpath commencing from a junction with Public Footpath BA5/36 at grid reference ST 7191 6891 (point H on the Order Map) and proceeding in a generally west-northwesterly direction for approximately 113 metres to a junction with Public Footpath BA5/63 at grid reference ST 7181 6897 (point K on the Order Map).

Width: 2 metres between grid reference ST 7191 6891 (point H on the Order Map) and grid reference ST 7181 6897 (point K on the Order Map).

##### **Public Footpath BA5/63**

A public footpath commencing from a junction with Public Footpath BA5/43 at grid reference ST 7182 6898 (point J on the Order Map) and proceeding in a generally southwesterly direction for approximately 14 metres to a junction with Public Footpath BA5/62 at grid reference ST 7181 6897 (point K on the Order Map) and turning in a generally westerly direction for approximately 61 metres to a junction with Public Footpath BA18/29 at grid reference ST 7175 6896 (point L on the Order Map).

Width: 2 metres between grid reference ST 7182 6898 (point J on the Order Map) and grid reference ST 7175 6896 (point L on the Order Map).

#### Public Footpath BA18/29

A public footpath commencing from a junction with Public Footpath BA5/63 at grid reference ST 7175 6896 (point L on the Order Map) and proceeding in a generally west-southwesterly direction for approximately 149 metres to a junction with public footpath BA5/64 at grid reference ST 7163 6889 (point M on the Order Map).

Width: 2 metres between grid reference ST 7175 6896 (point L on the Order Map) and grid reference ST 7163 6889 (point M on the Order Map).

#### Public Footpath BA5/64

A public footpath commencing from a junction with Public Footpath BA18/29 at grid reference ST 7163 6889 (point M on the Order Map) and turning in a generally southerly direction for approximately 31 metres to grid reference ST 7162 6886 (point N on the Order Map) and turning in a generally west-southwesterly direction for approximately 594 metres to a junction with Public Footpath BA5/54 at grid reference ST 7114 6852 (point P on the Order Map).

Width: 2 metres between grid reference ST 7163 6889 (point M on the Order Map) and grid reference ST 7114 6852 (point P on the Order Map).

#### Public Footpath BA5/65

A public footpath commencing from a junction with Public Footpath BA5/61 at grid reference ST 7269 6824 (point T on the Order Map) and proceeding in a generally north-northwesterly direction for approximately 294 metres to grid reference ST 7254 6850 (point R on the Order Map) and turning in a generally southwesterly direction for approximately 86 metres to grid reference ST 7248 6844 (point Q on the Order Map) and turning in a generally west-northwesterly direction for approximately 730 metres to a junction with Public Footpath BA5/46 at grid reference ST 7181 6868 (point E on the Order Map).

Width: 2 metres between grid reference ST 7269 6824 (point T on the Order Map) and grid reference ST 7181 6868 (point E on the Order Map).

#### Public Footpath BA5/66

A public footpath commencing from a junction with Public Footpath BA5/61 at grid reference ST 7273 6847 (point V on the Order Map) proceeding in a generally northeasterly direction for approximately 25 metres to a junction with Lansdown Road at grid reference ST 7275 6849 (point W on the Order Map).

Width: 2 metres between grid reference ST 7273 6847 (point V on the Order Map) and grid reference ST 7275 6849 (point W on the Order Map).

## **PART 2**

### **LIMITATIONS AND CONDITIONS**

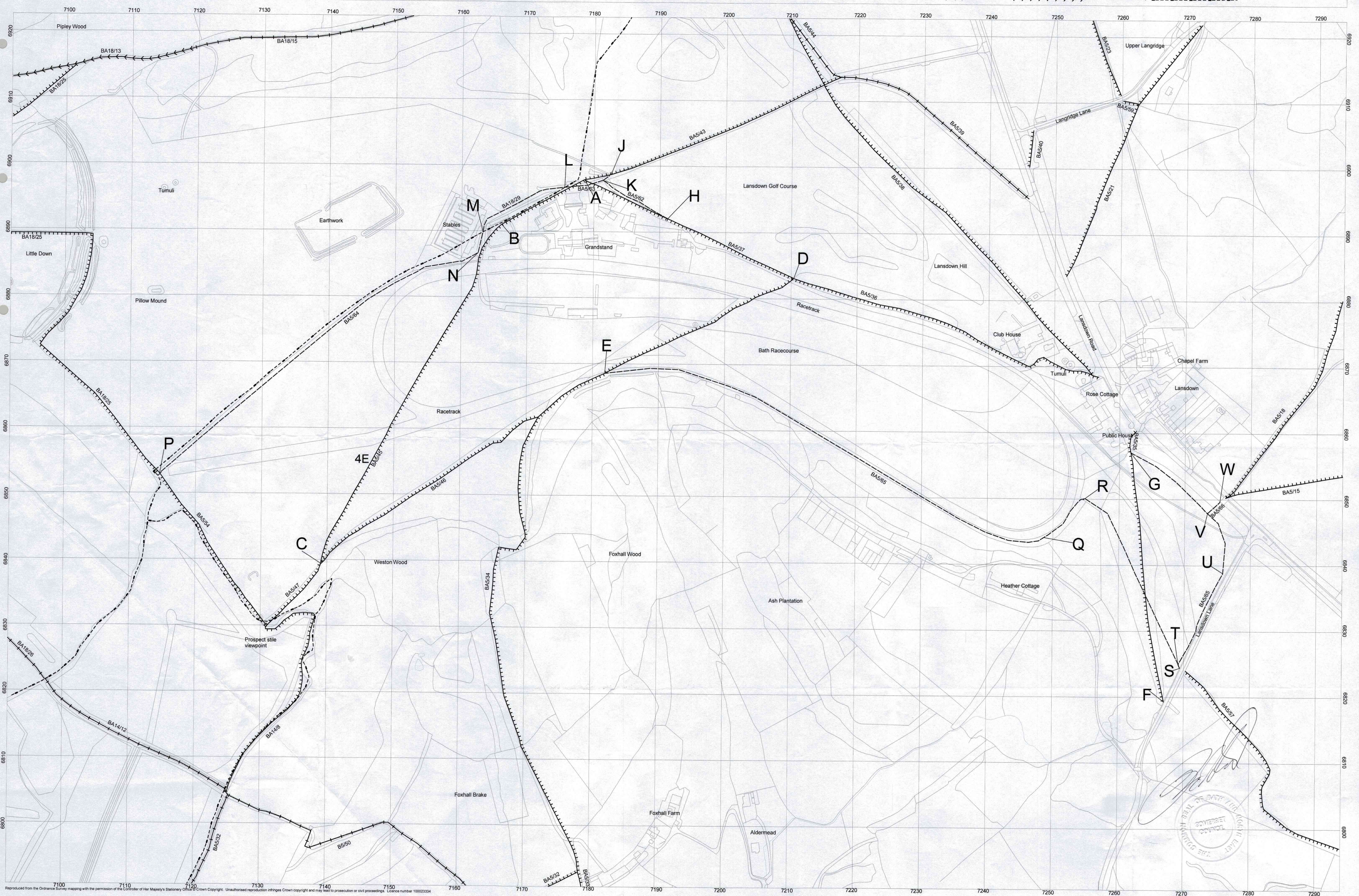
None.

Public footpaths to be created S T U V G H K J K L L M M N P E Q R T V W  
 BA5/61 BA5/62 BA5/63 BA18/29 BA5/64 BA5/65 BA5/66  
 Public footpaths currently shown on the Definitive Map intended for extinguishment F G H A J A A B C E D

Unaffected public footpath  
 Unaffected bridleway  
 Unaffected byway open to all traffic

Parish Boundary

Scale: 1:2500



**PUBLIC PATH EXTINGUISHMENT ORDER**

**HIGHWAYS ACT 1980**

**BATH AND NORTH EAST SOMERSET COUNCIL**

**BATH AND NORTH EAST SOMERSET COUNCIL  
(PUBLIC FOOTPATHS, BATH RACECOURSE, CHARLCOMBE)  
PUBLIC PATH EXTINGUISHMENT ORDER 2019**

This order is made by Bath and North East Somerset Council ("the authority") under section 118 of the Highways Act 1980 because it appears to the authority that the footpaths described in paragraph 1 below are not needed for public use.

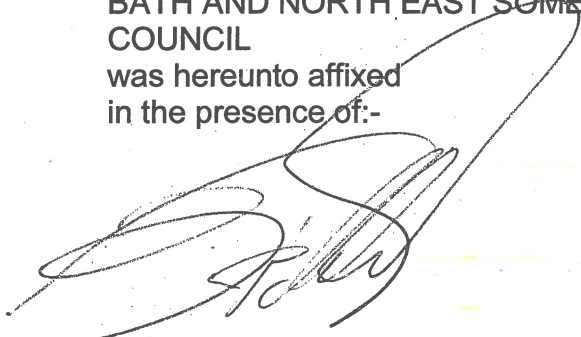
**BY THIS ORDER:**

1. The public rights of way over the land situate at Bath Racecourse, Charlcombe and shown by continuous bold lines on the map attached to this order and described in the Schedule to this order shall be extinguished after 49 days from the date of confirmation of this order.
2. Notwithstanding paragraph 1 of this order British Telecommunications plc shall have the following rights over the land referred to in paragraph 1 namely: where immediately before the date on which the footpaths are extinguished there is apparatus under, in, on, over, along or across it belonging to British Telecommunications plc for the purpose of carrying out their undertaking, British Telecommunications plc shall continue to have the same rights in respect of the apparatus as they then had.

Given under the Common Seal of the Bath and North East Somerset Council on the 16<sup>th</sup> day of May 2019

The COMMON SEAL of the  
BATH AND NORTH EAST SOMERSET  
COUNCIL

was hereunto affixed  
in the presence of:-



Authorised signatory





In pursuance of its powers conferred by Schedule 6 to the Highways Act 1980, the authority hereby confirms the foregoing order

The COMMON SEAL of the  
BATH AND NORTH EAST SOMERSET  
COUNCIL

was hereunto affixed

this            day of            20

in the presence of:-

## SCHEDULE

### Public Footpath BA5/35

The full width of the section of Public Footpath BA5/35 commencing from a junction with Lansdown Lane at grid reference ST 7267 6819 (point F on the Order Map) and proceeding in a generally northerly direction for approximately 385 metres to grid reference ST 7261 6856 (point G on the Order Map).

### Public Footpath BA5/37

The full width of the section of Public Footpath BA5/37 commencing from grid reference ST 7191 6891 (point H on the Order Map) and proceeding in a generally west-northwesterly direction for approximately 139 metres to a junction with Public Footpath BA5/43 and Public Footpath BA5/45 at grid reference ST 7178 6897 (point A on the Order Map).

### Public Footpath BA5/43

The full width of the section of Public Footpath BA5/43 commencing from grid reference ST 7182 6898 (point J on the Order Map) and proceeding in a generally westerly direction for approximately 41 metres to a junction with Public Footpath BA5/45 and Public Footpath BA5/37 at grid reference ST 7178 6897 (point A on the Order Map).

### Public Footpath BA5/45

The full width of Public Footpath BA5/45 commencing from a junction with Public Footpath BA5/43 and Public Footpath BA5/37 at grid reference ST 7178 6897 (point A on the Order Map) and proceeding in a generally west-southwesterly direction for approximately 137 metres to grid reference ST 7166 6891 (point B on the Order Map) and turning in a generally south-southwesterly direction for approximately 592 metres to a junction with Public Footpath BA5/46 and Public Footpath BA5/47 at grid reference ST 7139 6839 (point C on the Order Map).

### Public Footpath BA5/46

The full width of the section of Public Footpath BA5/46 commencing from a junction with Public Footpath BA5/36 and Public Footpath BA5/37 at grid reference ST 7210 6883 (point D on the Order Map) and proceeding in a generally west-southwesterly direction for approximately 321 metres to grid reference ST 7181 6868 (point E on the Order Map).

