

## Bath & North East Somerset Council

MEETING:	<b>Regulatory (Access) Committee</b>
MEETING DATE:	<b>15 January 2018</b>
TITLE:	<b>Castle School (BA27/19) Bridleway Creation Order</b>
WARD:	Keynsham South
<b>AN OPEN PUBLIC ITEM</b>	
<b>List of attachments to this report:</b> Appendix 1 - Decision Plan Appendix 2 - Decision Schedule Appendix 3 – Consultation Responses	

### 1 THE ISSUE

- 1.1 The issue under consideration is whether Bath and North East Somerset Council (“the Authority”) should make a public path creation order under section 26 of the Highways Act 1980 to create a public bridleway running from Newlands Road to Greenfield Road in Keynsham.

### 2 RECOMMENDATION

- 2.1 The Regulatory (Access) Committee is asked to grant authorisation for a Public Path Creation Order to be made to create a new public bridleway between Newlands Road and Greenfield Road in Keynsham as detailed on the plan attached at Appendix 1 (“the Decision Plan”) and in the schedule attached at Appendix 2 (“the Decision Schedule”).

### 3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 As part of a Section 106 Agreement dated 24th June 2011, the owners of The Meadows/K2 development site agreed to pay the Authority £40,000 (£42,207.89 including inflationary uplift) *“for or towards the Castle Primary School widening”*. This project has been included in the current Capital Transport Improvement Programme as scheme TC8691. The £3,400 legal costs associated with creating the public bridleway rights has already been drawn down and the scheme includes provision for £1,500 in compensation which may become payable within six months of the coming into effect of the order. The remaining £37,307.89 has been allocated to cover the costs of the associated physical works on site including surfacing, fencing and signage; this work is expected to be carried out during the 2018/19 financial year. Should an Order be made and confirmed, the new bridleway would become maintainable at public expense; the majority of the route is already public footpath maintainable at public expense.

## 4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

4.1 The Authority has a discretionary power to make public path orders. When considering a proposal 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).

4.2 Before making a creation order under section 26 of the Highways Act 1980 (“the Act”) the Authority must be satisfied that there is a *need* for a right of way in the area. In reaching its decision, 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,
- the effect which the creation of the path or way 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 path 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.

4.3 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 (“PPO Policy”). The PPO Policy sets out the criteria against which the Authority will assess 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.

4.4 The criteria are:

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

4.5 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. 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. 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 REPORT

- 5.1 It is proposed that the Authority makes a public path order to create a public bridleway commencing from a junction with Newlands Road at grid reference ST 6486 6751 (Point A on the Decision Plan) and proceeding in a generally south-southeasterly direction for approximately 51 metres to grid reference ST 6487 6746 (Point B on the Decision Plan) and turning in a generally southwesterly direction for approximately 17 metres to grid reference 6487 6745 (Point C on the Decision Plan) and turning in a generally south-southeasterly direction for approximately 87 metres to grid reference ST 6491 6737 (Point D on the Decision Plan) and turning in a generally south-southwesterly direction for approximately 10 metres to a junction with Greenfield Road at grid reference ST 6490 6737 (Point E on the Decision Plan). This route is hereafter referred to as the 'Proposed Bridleway'.
- 5.2 A narrower section of the Proposed Bridleway between Points A and C on the Decision Plan is currently recorded on the List of Streets as Class 6 Highway. This section would be widened, which would involve moving back the fence which currently separates Castle Primary School from the Class 6 Highway and tarmacking this additional width. The section of the Proposed Bridleway between Points C and D on the Decision Plan is currently recorded on the Definitive Map and Statement as a public footpath and there would be no need for any works to this section. The section of the Proposed Bridleway between Points D and E on the Decision Plan crosses a small grassed area of land which currently does not carry any recorded public rights; this section would need to be tarmacked and a drop curb installed at Point E on the Decision Plan.
- 5.3 The public already have the right to use the full linear route of the Proposed Bridleway on foot, with the exception of the section between points D and E on the Decision Plan. However, upgrading the status to that of a public bridleway will give members of the public the right to ride a bicycle on the route by virtue of section 30 of the Countryside Act 1968. Additionally, widening the route as detailed in paragraph 5.2 above will make it physically suitable as a route for both pedestrians and cyclists.
- 5.4 In 2011, planning permission was granted for the construction of 285 dwellings which make up The Meadows/K2 housing development. The Meadows is located immediately to the south of the pre-existing Federated housing developments which includes Newlands Road and The Brambles. However, the only access to The Meadows estate is via Park Road and this requires cyclists to follow a circuitous route. The Proposed Bridleway would provide a significantly more direct route for cyclists between the two communities and this will be of particular benefit to pupils, parents and staff who are seeking to cycle from The Meadows to Castle Primary School, whose entrance is located at Point A on the Decision Plan. The Proposed Bridleway is approximately 165 metres in length, compared with the alternative route using the pre-existing highway network which is approximately 1500 metres to reach the same location; this would require members of the public to cycle on the ordinary road network alongside motor vehicles. The creation of the Proposed Bridleway for cyclists would significantly add to the convenience of persons resident in the area.
- 5.5 None of the parties with a legal interest in the land over which the Proposed Bridleway runs has raised any objection to the proposals. As explained in paragraph 8.2 below, it has not been possible to contact one landowner but all their affected land is already public footpath and they already cannot therefore use the

land for their own purposes. The remainder of the land is owned by the Authority, whose School Assets Project Manager has stated that they support of the proposal, and Taylor Wimpey UK Ltd, who have funded the proposal. The creation of the Proposed Bridleway would not have an adverse effect on the rights of persons interested in the land.

- 5.6 The surface of the Proposed Bridleway will be flat, smooth and surfaced to a standard which will make it easily accessible for members of the public with mobility or visual impairments. The proposals will have a neutral effect on members of the public with other protected characteristics and will be in keeping with the Authority's duties under the Equality Act.
- 5.7 The proposal would contribute towards the Authority achieving a number of actions which are identified in the Rights of Way Improvement Plan's Statement of Actions including:
- Action 4.1 - *"Identify improvements to enable travel for all by foot / on bike to employment, health services, education, leisure & transport nodes"*
  - Action 4.6 - *"Identify gaps in the wider recreational network that will improve accessibility and connectivity"*
  - Action 4.8 - *"Identify improvements needed to the PROW network associated with regeneration & housing/employment growth"*

Paragraph 2.24 of the ROWIP highlights the need for proposals to not unduly benefit one class of user at the expense of another. It is considered that this is achieved by the provision of a sufficient width to allow both cyclists and pedestrians to use the route without conflict.

- 5.8 This is no agriculture, forestry or equiculture in the immediate vicinity of the Proposed Bridleway and the proposals will not have any effect on conserving flora, fauna and geological and physiological features.
- 5.9 As stated above the Proposed Bridleway will improve the connectivity of the network and will have a positive equalities impact. Additionally, the Proposed Bridleway will be flat and created without the need for any furniture such as gates or barriers. The existing route will be widened and the status upgraded to bridleway and the resurfacing of the existing route will mean that it is unlikely to need any significant maintenance in the short or medium term. Safety is also a PPO Policy consideration and this issue is addressed in paragraphs 5.10 to 5.14 below.
- 5.10 The Authority received two objections against the proposals; the first objection is from a local resident that lives adjacent to the Proposed Bridleway (Objector 1) and the second objection is from Cllr Alan Hale, the elected member for the ward of Keynsham South (Cllr Hale).
- 5.11 Objector 1 stated that *"My main concern is who will take advantage of the widened paths i.e. the motor scooter lads from the summer holidays, speed limits, not staying on the cycle path but using the footpaths between our homes to access Newlands Road etc."* The existing route is already physically accessible to illegal, motorised use and this will not alter as a result of the proposals. If the route was upgraded to a public bridleway then it would still be a criminal offence to ride a motorised scooter on the Proposed Bridleway and enforcement would continue to be the responsibility of the police.

- 5.12 Cllr Hale objected on the grounds that widening the route would make it a faster cycle route and increase the risk of personal injury. Both objectors refer to the Proposed Bridleway already being used by cyclists and, in part, the Authority must therefore consider how best to manage the safety of members of the public in this context. The Department of Transport's Local Transport Note 2/08 provides guidance on Cycle Infrastructure Design. The guidance indicates that the most suitable means of avoiding conflict between users is to provide sufficient width to allow users to comfortably pass each other. Paragraph 8.5 states that "*The minimum recommended width for a two-way cycle track is 3 metres*" but that additional allowance should be made where the route is "*bounded by a vertical feature such as a wall, railings or kerb*".
- 5.13 Paragraph 6.9 of the Authority's PPO Policy states that the minimum width for an unenclosed bridleway is 3 metres and that a greater width may be required where the path is likely to be enclosed. The section of the Proposed Bridleway between points A and B on the Decision Plan would be bounded by a fence and hedge and it is therefore proposed that this section is 3.5 metres wide. The section between points B and C on the Decision Plan would be 4.3 metres except immediately south of point B on the Decision Plan where a tree restricts the width to 3 metres; this is still in accordance with Local Transport Note 2/08 which states that "*Narrow stretches should be kept to short lengths.*" The section of the Proposed Bridleway between points C and E on the Decision Plan are not bounded on either side by vertical features and this section would be 3 metres wide.
- 5.14 It has been suggested that pairs of staggered metal barriers should be installed to form a chicane. Paragraph 8.15.1 of the Guidance states that "*Where there is potential for conflict, it may be better to widen the route or address visibility issues rather than install controls. If this is not possible, it may be appropriate to introduce measures to slow cyclists down, such as rumble surfaces, humps, or staggered barrier arrangements (barriers should be considered last).*" Use of the Proposed Bridleway would be monitored and, if control measures were considered necessary, they would be considered in the priority order identified in the guidance.
- 5.15 A balanced assessment of all the additional criteria set out in the PPO Policy and summarised in paragraphs 5.9 to 5.14 above, shows that the proposals would positively impact upon the public rights of way network.

## **6 RATIONALE**

- 6.1 It is proposed that making an order to create a new public bridleway between Newlands Road and Greenfield Road in Keynsham is the preferred recommendation on the grounds that the legislative and policy tests have been met and that the new route will improve connectivity for members of the public on bicycle.

## **7 OTHER OPTIONS CONSIDERED**

- 7.1 The alternative option would be to maintain the status quo, whereby cyclists would continue to use the existing highway network. This option would not deliver any improvements for the public.

## 8 CONSULTATION

- 8.1 The contactable, affected landowners (the Authority and Taylor Wimpey UK Ltd), adjacent landowners, Castle Primary School, Keynsham Town Council, national and local user groups, the Ward Councillors and statutory undertakers were all consulted about the proposed diversion for a period of six weeks. Additionally site notices were erected at either end of the Proposed Bridleway and on the Authority's website to seek the views of members of the public.
- 8.2 Approximately two-thirds of the width of the section of the Proposed Bridleway between points A and C on the Decision Plan is registered as being owned by Federated Design and Building Group Limited, who built the housing estate which includes The Brambles and Newlands Road. However, Companies House does not have any record of a company by this name still legally existing and there is no record of this company or its potential successors in title at the address registered with Land Registry. It has therefore not been possible to contact this landowner directly.
- 8.3 The Authority's School Assets Project Manager stated that; "*We would support creating the cycle path as shown as it will benefit children's safe routes to school but cannot fund these works and will need the correct consents to transfer the strip of land.*" As stated in paragraph 3.1 above, the cost of the physical works are expected to be covered by the existing Section 106 contribution and the Authority is in the process of seeking the required Secretary of State consent. It should be noted that although these proposals would result in Castle Primary School losing approximately 65m<sup>2</sup> along its western boundary, the Section 106 which has provided funding for these proposals also provides the School with approximately 6,500m<sup>2</sup> of additional land immediately to the south of the existing site. The Authority's Property Records Co-ordinator stated that they have no objection to the proposals but that the school land affected will need to be re-appropriated for highway purposes; this re-appropriation would be carried out alongside the making of a creation order. Taylor Wimpey stated that they "*do not have any specific comments*".
- 8.4 The Ramblers' Area Footpath Secretary stated that the proposals '*are in order*' but states that the section of the Proposed Bridleway between points D and E on the Decision Plan does not exist on the ground; this section would be surfaced and a dropped curb installed prior to the Authority certifying that the route is in a fit condition for use by the public. The British Horse Society's local representative stated "*I heartily support the principle of new paths being made all purpose so support this proposal*". Cllr O'Brien sought clarification about the alignment of the Proposed Bridleway and a number of statutory undertakers stated that their plant would not be affected. Two objections were received and the contents of these objections are considered in paragraphs 5.11 to 5.14 above.

## 9 RISK MANAGEMENT

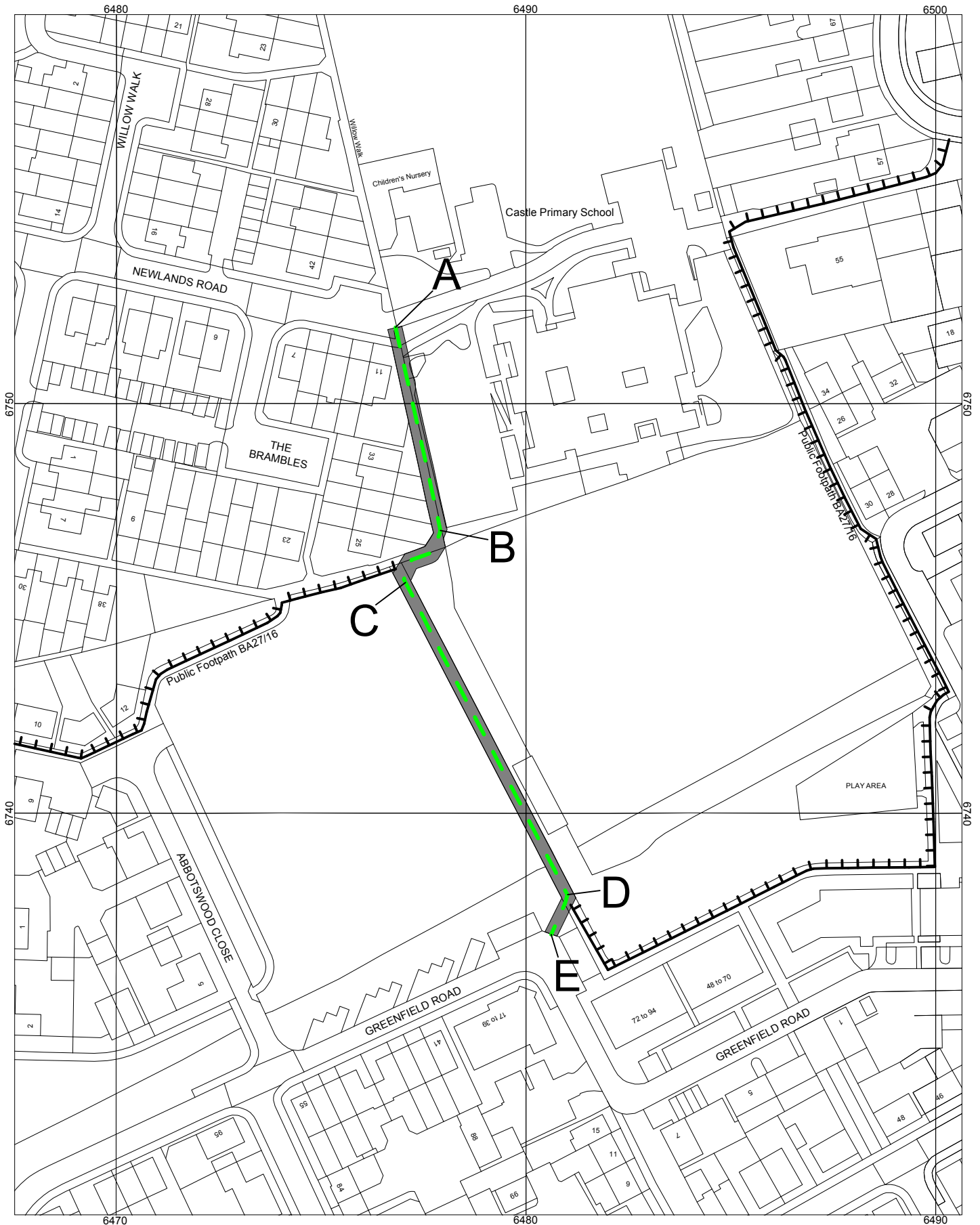
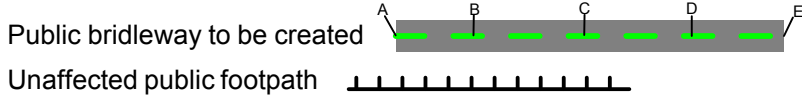
- 9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

<b>Contact person</b>	Graeme Stark – 01225 477650
<b>Background papers</b>	PPO Policy available on Authority's website
<b>Please contact the report author if you need to access this report in an alternative format</b>	

# APPENDIX 1: Decision Plan



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**PART 1**

**DESCRIPTION OF SITE OF EXISTING PATH OR WAY**

A public bridleway commencing from a junction with Newlands Road at grid reference ST 6486 6751 (Point A on the Order Map) and proceeding in a generally south-southeasterly direction for approximately 51 metres to grid reference ST 6487 6746 (Point B on the Order Map) and turning in a generally southwesterly direction for approximately 17 metres to grid reference 6487 6745 (Point C On the Order Map) and turning in a generally south-southeasterly direction for approximately 87 metres to grid reference ST 6491 6737 (Point D on the Order Map) and turning in a generally south-southwesterly direction for approximately 10 metres to a junction with Greenfield Road at grid reference ST 6490 6737 (Point E on the Order Map).

Width: 3.5 metres between grid references ST 6486 6751 (Point A on the Decision Plan) and ST 6487 6746 (Point B on the Decision Plan).

Varying between 3 metres and 4.3 metres as shown shaded grey on the Order Map between grid references ST 6487 6746 (Point B on the Decision Plan) and ST 6487 6745 (Point C On the Decision Plan).

3 metres between grid references ST 6487 6745 (Point C On the Decision Plan) and ST 6490 6737 (Point E on the Decision Plan).

**PART 2**

**LIMITATIONS AND CONDITIONS**

None.