

**APPLICATION FOR A PUBLIC PATH DIVERSION  
ORDER AFFECTING PUBLIC FOOTPATHS BA15/27  
and BA15/35, Hunstrete, Marksbury**

**1. The Issue**

- 1.1 An application has been made to divert sections of public footpaths (FPs) BA15/27 and BA15/35 at Dave Crookes Fishery, Hunstrete. Part of the route of FP BA15/27 runs through the landowner's car park and part runs through woodland which is currently fence off. The landowner has previously provided an undefined alternative route to the fenced off part. The definitive line of FP BA15/35 is on a slightly different alignment to a path laid out by the landowner which is currently used by the public. The definitive line runs over a bank slightly to the north of the proposed path. The application has been made because the landowner wishes to provide a clearer route through the woodland and along the edge of the car park and to align the definitive right of way with the route currently walked.

**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 sections of Public Footpaths BA15/27 and BA15/35 as detailed on the plan attached at Appendix 1 ("the Decision Plan") and in the schedule attached at Appendix 2 ("the Decision Schedule").

**3. Financial Implications**

- 3.1 The Applicant has agreed to pay the cost for processing an Order and the cost of any required notices in a local newspaper. Should an Order be made and confirmed, the Proposed Footpaths 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 Development Management Committee to consider the matter in light of those objections. Should the Team Manager - Highways Maintenance and Drainage or Committee decide to continue to support the Order, then the Order will be referred to the Secretary of State for the Environment, Food and Rural Affairs for determination. Bath and North East Somerset Council ("the Authority") would be responsible for meeting the costs incurred in this process, for instance at a Public Inquiry.

**4. Human Rights**

- 4.1 The Human Rights Act incorporates the rights and freedoms set out in the European Convention on Human Rights into UK law. So far as it is possible all legislation must be interpreted so as to be compatible with the convention.

- 4.2 The Authority is required to consider the application in accordance with the principle of proportionality. The Authority will need to consider the protection of individual rights and the interests of the community at large.
- 4.3 In particular the convention rights which should be taken into account in relation to this application are Article 1 of the First Protocol (Protection of Property), Article 6 (the right to a fair hearing) and Article 8 (Right to Respect for Family and Private Life).

## **5. The Legal and Policy Background**

- 5.1 The Authority has a discretionary power to make Public Path Orders. When considering an application for a Public Path Order, the Authority should first consider whether the proposals meet the requirements set out in the legislation (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.
- 5.5 The Authority must also give due regard to the effect the diversion will have on farming and forestry, biodiversity and members of the public with disabilities.
- 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,

## **6. Background and Application**

6.1 The two FPs are in the grounds of Dave Crookes Fishery and the topography has been changed over the years to accommodate changes to and around the lakes. FPs BA15/27 and BA15/35 are recorded on the Definitive Map and Statement which have a relevant date of 26<sup>th</sup> November 1956. A public path diversion order affecting FP BA15/27 was confirmed in 1980 diverting the section from point B (on the Decision Plan) to point C which is now the current route, in order to accommodate the changes to the lakes. The section from point A to point B lies on the original route. The northern half of this section runs through a wooded area which has been fenced off in recent years and the public have been using a substitute route provided by the landowner which lies to the west of Existing FP 1. The Applicant now intends to clear a route through the wooded area and wishes the remainder of FP 1 (from point H to point C) to run at the edge of the car parking area rather than along an undefined route through the parking area. The Applicant intends to provide a fence between the Proposed FP 1 and the car parking area.

6.2 A marked path provided by the landowner that the public have been walking to the north of the lake runs approximately 2-3 metres to the south of the definitive line of FP BA15/35. Parts of the definitive line run over a steep bank and through shrubs. The Applicant wishes to align the definitive line with the route currently walked.

6.3 The diversions are proposed in the interest of the landowner in order to provide a more defined route around the car park, avoid the fencing obstructing the FP and align Proposed FP 2 with the route actually walked by the public.

### **6.4 Description of the Routes to be Diverted**

The full width of a section of FP BA15/27 commencing from a junction with Hunstrete Lane and FP BA15/35 at grid reference ST 6478 6235 (point A on the Decision Plan) and proceeding in a generally southerly direction for approximately 141 metres to grid reference ST 6477 6221 (point B) and turning in a generally southeasterly direction for

approximately 32 metres to grid reference ST 6479 6218 (point C) (referred to as "Existing FP 1").

6.5 The full width of a section of FP 15/35 commencing from a junction with Hunstrete Lane and FP BA15/27 at grid reference ST 6478 6235 (point A) and proceeding in a generally westerly direction for approximately 91 metres to grid reference ST 6469 6233 (point E) and turning in a generally southwesterly direction for approximately 91 metres to grid reference ST 6462 6228 (point F) (referred to as "Existing FP 2").

6.6 These routes are referred to collectively as the "Existing FPs".

#### 6.7 **Description of the Proposed Footpaths**

A section of public footpath commencing from a junction with the new line of FP BA15/35 at grid reference ST 6476 6234 (point G) and proceeding in a generally south-southeasterly direction for approximately 88 metres to grid reference grid reference ST 6479 6226 (point H) and continuing in a generally southerly direction for approximately 83 metres to grid reference ST 6479 6218 (point C) (referred to as "Proposed FP 1").

6.8 A section of FP commencing from a junction with Hunstrete Lane at grid reference ST 6478 6234 (point D) and proceeding in a generally westerly direction for approximately 27 metres to a junction with the new line of FP BA15/27 at grid reference ST 6476 6234 (point G) and continuing in a generally west-southwesterly direction for approximately 153 metres to grid reference ST 6462 6228 (point F) (referred to as "Proposed FP 2").

6.9 These routes are referred to collectively as the "Proposed FPs" and will be 2 metres in width.

6.10 **Limitations and Conditions** - The Proposed FPs would be created without any limitations or conditions. However, it is intended to authorise gates under section 147 of the Act at points D, L, K and M to prevent the ingress and egress of animals. These gates have all previously been in use by the public.

## **7. Consultations**

7.1 Affected landowners, Marksbury Parish Council, national and local user groups, the Ward Councillor and statutory undertakers were all consulted about the proposed diversion for an intended period of six weeks ("the Consultation Period"). Additionally site notices were erected at either end of the sections of the Existing FPs and Proposed FPs and on the Authority's website to seek the views of members of the public. Existing FP 1 was obstructed at point M during the first week of consultation and reopened after a few days with a new gate and the Consultation Map was amended at this point to reflect more clearly that adjoining land was not affected by the proposal. All consultees except Statutory Consultees, the member of the public who

had commented (see paragraph 7.5 – 7.9) and the adjoining landowner were sent the revised plan and it was amended on the Authority's website. An extra week was added to the consultation period as a result ("the extended Consultation Period"). It was decided it was not necessary to re-consult with Statutory Consultees as the change was very minor and wouldn't affect their comments.

- 7.2 In response to the consultation, a number of statutory undertakers stated that their plant would not be affected or that they had no objection to the proposal.
- 7.3 The adjoining landowner telephoned to discuss the proposal and as a result the consultation plan was modified to clarify that no changes were planned on the adjoining land as explained in paragraph 7.1.
- 7.4 The local Ramblers representative stated that he had no objection to the revised proposal.
- 7.5 One email was received from a member of the public in opposition to the Proposed Footpaths. A response clarifying the proposal was sent to the objector as it was felt that the proposal had not been fully understood. No further correspondence was received in reply to the response.
- 7.6 Issues raised by the objector are summarised as follows:
1. Unhappy at proposed changes to the current course of the footpaths around the lake.
  2. Considered the comment from the Applicant that the changes would protect vulnerable people who are fishing was an inadequate reason for change.
  3. Did not wish to lose the wide smooth paths which are open, easy to walk and attractive, and suitable for the disabled to use.
  4. Considered that there was a significant camber on the proposed route.
  5. Unhappy with the current 'otter fence' around the Fishery.
- 7.7 The above issues are addressed as follows:  
Parts of the definitive lines of the Existing FPs are not currently available or not currently suitable for use by the public. This will be remedied by the proposal. The Applicant wishes to reduce public access to the whole area of the Fishery but is not reducing the extent of public footpath on its land. The fencing will not affect the extent of the Proposed FPs.
- 7.8 FP 1 The definitive line of Existing FP 1 runs through a fenced off woodland. It continues through an unmarked car parking area which is available to the public. The public have been using a substitute route provided by the landowner which lies to the west of Existing FP 1. The landowner now intends to clear a route through the wooded area which provides a route more akin to the original environment and wishes the remainder of FP 1 (from point H to point C) to run at the edge of the

car parking area rather than through the parking area. The landowner intends to provide a fence between the Proposed FP 1 and the car parking area in order to provide more security and safety to the public and people who fish including vulnerable children and adults. Proposed FP 1 is to be cleared and flattened to a standard fit for public use and acceptable to the Authority before implementation of the proposal.

- 7.9 FP 2 The definitive line of Existing FP 2 runs approximately 2-3 metres to the north of the path that has been laid out by the landowner. Parts of the definitive line run over a steep bank and through shrubs. The wide path commended by the objector referred to in paragraph 7.6 above is Proposed FP 2 and no changes are being made to this path. This will become the definitive line of the public footpath and will therefore be protected for future use.
- 7.10 No other comments were received in relation to these proposals during the extended Consultation Period.

## **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 path in the interests of the public and/or of the owner, lessee or occupier of the land crossed by the path:** The northern section of Existing FP 1 is currently fenced off and the southern section runs unmarked through a car parking area. The owner wishes to open up a route through the wooded area and divert the FP to the edge of the car parking area which can then be fenced off making the route easily identifiable to the public and improving safety and security of the car park and fishing areas. Proposed FP 2 is a realignment of Existing FP 2 as the owner has created a flat, wide path which is beneficial to the public. Diverting the Existing FPs onto the Proposed FPs will avoid the landowner having to reinstate the obstructed routes. 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:** Proposed FP 1 starts at a junction with Proposed FP 2 which is on a highway connected to the starting point of Existing FP 1 and is substantially as convenient to the public. Proposed FP 1 finishes at the same point as Existing FP 1. Proposed FP 2 starts at a junction with Hunstrete Lane which is substantially as convenient to the public and finishes at the same point as Existing FP 2. This 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:** Proposed FP 1 runs through the

same wooded area and car parking area, but the route is to be smoothed out and made clearer for the public to walk. Proposed FP 2 is approximately 2-3 metres further south than Existing FP 2 but over a flatter surface. The Proposed FPs are for a similar length as the Existing FPs and do not adversely affect the destination of any walkers. This test should therefore be considered to have been met.

- 8.5 **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.**
- 8.6 **Public enjoyment of the Paths:** The Proposed FPs run through the same environment as the Existing FPs and views from Proposed FP 2 will be minimally clearer to the public as it is on a higher level but closer to the fishing lake in parts. Proposed FP 1 is minimally further from the lake but is removed from the car parking area which may enhance enjoyment by the public. The diversion will therefore have no adverse effect on public enjoyment; this test is therefore considered to have been met.
- 8.7 **Effect on other land served by the existing footpath and land affected by the proposed footpath:** The Proposed FPs do not have an adverse effect on other land served by the Existing FPs as the terminal points are similar. The Proposed FPs do not have an adverse effect on land affected by the Proposed FPs as they cover the same land; this test is therefore considered to have been met.
- 8.8 **Effect on land affected by any proposed new path, taking into account the provision for compensation:** There is no adverse effect on land affected by the Proposed FPs with regard to compensation as the Existing and Proposed FPs are all under the ownership of the Applicant; this test is therefore considered to have been met.
- 8.9 **The Authority must give due regard to the effect the diversion will have on farming and forestry, biodiversity and members of the public with disabilities:** Proposed FP 1 is to be diverted to an alternative route through the wooded area and to the edge of the car parking area. This route will be more clearly delineated and have a 'compacted earth' surface. Proposed FP 2 is already in use by the public and no changes are planned to this route. The diversions will have no effect on farming and forestry and may improve biodiversity as walkers will be on clearly marked paths. Path users with mobility and sight impairments should find the improved surfaces of the Proposed FPs and the newly levelled and cleared surfaces more amenable to use and clearer to follow.
- 8.10 **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:**

- 8.11 Path users with mobility impairment should find the improved surfaces of the Proposed FPs and the newly levelled and cleared surfaces easier to use. Path users with sight impairment should find the Proposed FPs clearer and easier to follow as they will be flatter, defined routes. The Proposed FPs will have no adverse effect on path users with other disabilities.
- 8.12 It is intended to authorise gates under section 147 of the Act, to prevent the ingress and egress of animals, at points D, L, K and M. These gates have all previously been used by the public. Authorising the gates would be in keeping with the principles of 'Least Restrictive Access'.
- 8.13 There is no change to the gradient between Existing FP 1 and Proposed FP 1. Parts of existing FP 2 traverse a bank whereas Proposed FP 2 is on a level surface. There is therefore an improvement to the gradient of Proposed FP 2.
- 8.14 Maintenance of the Proposed FPs should be improved because of improved surfacing.
- 8.15 The improved surfaces of the Proposed FPs and will aid the safety of all walkers. Moving Proposed FP 1 to the edge of the car parking area and fencing the car park off from Proposed FP 1 will improve the safety of all walkers.
- 8.16 Existing FP 1 runs through a wooded area then through the car parking area in the vicinity of the fishing lake. Part of Proposed FP 1 is not as close to the fishing lake as part of Existing FP 1 but moving Proposed FP 1 to the edge of the car parking area may provide an improved environment for the walker. Proposed FP 2 provides an improved view of the lake as it is on a higher level than Existing FP 2.
- 8.17 The Proposed FPs do not have any impact on connectivity, width or status.
- 8.18 It is considered that on balance the proposed diversions are in accordance with the Policy.

## **9. Risk Management**

- 9.1 There are no significant risks associated with diverting the FPs.



## **10. Conclusion**

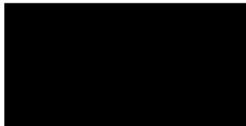
- 10.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposals are in compliance with the Public Path Order Policy.
- 10.2 The Diversion Order would be in the interests of the landowner.
- 10.3 The Order should be made as proposed.
- 

### **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:

- 1) a section of Public Footpath BA15/27 and
- 2) a section of Public Footpath BA15/35

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



Craig Jackson

Dated: 28/11/18

Team Manager - Highways Maintenance and Drainage



## **DECISION SCHEDULE**

### **PART 1**

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

The full width of the section of public footpath commencing from a junction with Hunstrete Lane and FP BA15/35 at grid reference ST 6478 6235 (point A on the Decision Plan) and proceeding in a generally southerly direction for approximately 141 metres to grid reference ST 6477 6221 (point B on the Decision Plan) and turning in a generally southeasterly direction for approximately 32 metres to grid reference ST 6479 6218 (point C on the Decision Plan).

The full width of the section of public footpath commencing from a junction with Hunstrete Lane and Public Footpath (FP) BA15/27 at grid reference ST 6478 6235 (point A on the Decision Plan) and proceeding in a generally westerly direction for approximately 91 metres to grid reference ST 6469 6233 (point E on the Decision Plan) and turning in a generally southwesterly direction for approximately 91 metres to grid reference ST 6462 6228 (point F on the Decision Plan).

### **PART 2**

#### **DESCRIPTION OF SITE OF NEW PATH OR WAY**

A section of public footpath commencing from a junction with the new line of FP BA15/35 at grid reference ST 6476 6234 (point G on the Decision Plan) and proceeding in a generally south-southeasterly direction for approximately 88 metres to grid reference grid reference ST 6479 6226 (point H on the Decision Plan) and continuing in a generally southerly direction for approximately 83 metres to grid reference ST 6479 6218 (point C on the Decision Plan).

Width: 2 metres between grid reference ST 6476 6234 (point G on the Decision Plan) and grid reference ST 6479 6218 (point C on the Decision Plan).

A section of public footpath commencing from a junction with Hunstrete Lane at grid reference ST 6478 6234 (point D on the Decision Plan) and proceeding in a generally westerly direction for approximately 27 metres to a junction with the new line of FP BA15/27 at grid reference ST 6476 6234 (point G on the Decision Plan) and continuing in a generally west-southwesterly direction for approximately 153 metres to grid reference ST 6462 6228 (point F on the Decision Plan).

Width: 2 metres between grid reference ST 6478 6234 (point D on the Decision Plan) and grid reference ST 6462 6228 (point F on the Decision Plan).

### **PART 3**

#### **LIMITATIONS AND CONDITIONS**

None.



Appendix 1 Decision Plan  
Public Footpaths BA15/27 and  
BA15/35 Hunstrete, Marksbury

Public footpath to be created G H J K C D G L F

Unaffected public footpath —————

Public Footpath to be stopped up A B C A E F

Scale: 1:1250

