

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH CL8/43 AT
MORGANS, EAST HARPTREE**

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath CL8/43 at Morgans, Morgan's Lane in East Harptree to divert the footpath away from a route separating a residential garden and workshops from a house to a route further away from the house and gardens in order to improve privacy.

2. Recommendation

- 2.1 That the Team Manager - Highways Maintenance and Drainage grants authorisation for a Public Path Diversion Order to be made to divert a section of Public Footpath CL8/43 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 defray any compensation which becomes payable in consequence of the coming into force of the Order, pay the cost for processing an Order, the cost of any required notices in a local newspaper and for the works required to raise the new route to an acceptable standard for use by the public. Should an Order be made and confirmed, the Proposed Footpath will become maintainable at public expense.
- 3.2 Should an Order be made and objections received and sustained, then the Order will either be referred back to the Team Manager - Highways Maintenance and Drainage or to the 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 Public footpath CL8/43 is recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956. The legal alignment has remained unchanged ever since.

6.2 The Existing Footpath currently runs down a sloping field forming part of the Mendip Hills then over a stony track which usually runs with water draining from the fields and is difficult to navigate. The Existing Footpath then separates a residential garden and workshop from the adjoining house. An application has been made by the owners of the house, garden and workshop to divert the footpath to a more southerly route away from their property. The Application Route took the walker to the south of a wooded area and this was the route consulted on (see section 7 below). After the consultation period it became apparent that the surface of the Application Route was too waterlogged to be suitable for a public footpath. It is therefore proposed to bring the route a few metres further north into a wooded area. The surface of the wooded area is considered more suitable than the Existing Footpath or the Application Route. The Proposed Footpath will traverse the field at a higher contour than the Existing Footpath before entering the wooded area and paddock thereby improving the surface of the footpath.

6.3 Description of the Existing Footpath

The proposal is to divert the full width of the section of Public Footpath CL8/43 commencing from grid reference ST 5662 5448 (point A on the Decision Plan) and proceeding in a generally north-northeasterly direction for approximately 248 metres to a junction with Public Footpath CL8/48 and Morgan's Lane at grid reference ST 5674 5468 (point B). This route is referred to as the "Existing Footpath".

6.4 Description of the Proposed Footpath

The revised proposed route commences from grid reference ST 5662 5448 (point A) proceeding in a generally easterly direction for approximately 213 metres to a junction with Public Footpath CL8/48 at grid reference ST 5683 5452 (point E). The width will be 2 metres throughout. This route is referred to as the "Proposed Footpath".

6.5 Limitations and Conditions

No limitations or conditions are proposed. The Proposed Footpath includes crossing field boundaries and authorisation of pedestrian gates is proposed at 3 field boundaries under section 147 of the Act, to prevent the ingress and egress of animals.

7. Consultations

- 7.1 Affected landowners, East Harptree Parish Council, West Harptree Parish Council, Mendip Hills AONB Unit, national and local user groups, the Ward Councillor and statutory consultees were all consulted about the proposed diversion for a period of six weeks (“the Consultation Period”). Additionally site notices were erected at both ends of the proposed diversion and on the Authority’s website to seek the views of members of the public.
- 7.2 In response to the consultation, a number of statutory undertakers stated that their plant would not be affected.
- 7.3 East Harptree Parish Council stated its support for the proposal and does not have any objections to it.
- 7.4 The local Ramblers representative stated that he had no objections to the proposal.
- 7.5 No other comments were received in relation to these proposals during the 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 Existing Footpath crosses a field then runs down a stony track then separates the Applicants’ house from their residential garden and workshop. The Applicants own the freehold of the house and garden. Part of the Existing Footpath is over unregistered land which is occupied by the Applicants. The Applicants applied for the diversion to route the Existing Footpath away from the vicinity of their garden, workshop and house in order to improve privacy. The owners of the field are in agreement with the proposal. Public use of the Proposed Footpath rather than the Existing Footpath should improve the condition of the field as the public will be routed away from the saturated corner of the field. This test should therefore be considered to have been met.
- 8.3 **The Authority must be satisfied that the diversion does not alter any point of termination of the path, other than to another point on the same path, or another highway connected with it, and which is substantially as convenient to the public:** The Proposed Footpath

starts at the same point as the Existing Footpath and finishes at a point on a Public Footpath which is connected with it. The finish point is considered substantially as convenient to the public; 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:** Matters such as length, difficulty of walking and the purpose of the path pertain to the convenience to the public. The length of the footpath is reduced by approximately 35 metres. The distance walked may be reduced or increased depending where the walker is going. The distance to point B will be approximately 147 metres further to walk. The distance to point C will be approximately 217 metres less to walk; the distance to the start of Public Footpath CL8/46 will be approximately 107 metres more to walk. The location of the Existing and Proposed Footpaths within the wider rights of way network is such that any additional distance for the walker is likely to represent an insignificant increase in their overall walk. The surface of the Existing Footpath is difficult to walk due to poaching in the corner of the field and is slippery due to the rocky surface which has water draining and flowing along it for most of the year. The Proposed Footpath takes the walker along a higher contour and through a wooded area and paddock which will improve the surface of the route for the walker. It is considered on balance that the Proposed Footpath is not substantially less convenient to the public; 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 Path as a whole:** The Proposed Footpath crosses improved terrain over the Existing Footpath, traversing a wooded area which is covered with bluebells in season. The effect on public enjoyment of the Proposed Footpath as a whole is therefore improved; this test should therefore be 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 diversion will not have an adverse effect on either land served by the Existing Footpath or land affected by the Proposed Footpath; this test should therefore be 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 Footpath with regard to compensation as the Existing Footpath already crosses the same field and the landowner is in agreement with the proposal. The Applicants own the wooded area and the paddock; this test should therefore be 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:** It is intended to make minimal changes to the surface of the wooded area in order to preserve its natural qualities. It is considered that the proposal will not have an adverse effect on biodiversity, farming or forestry. Path users with mobility and visual impairments will benefit from the improved surface of the Proposed Footpath; this test should therefore be considered to have been met.
- 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 The Proposed Footpath starts at the same point as the Existing Footpath and finishes on Public Footpath CL8/48 approximately 182 metres further south east which will have a minimal effect on connectivity.
- 8.12 The Proposed Footpath runs over improved terrain. The proposal should therefore have a positive impact on those with mobility and visual impairments. The proposed diversion has a neutral effect on those with other impairments.
- 8.13 It is intended to authorise gates under s147 of the Act at 3 field boundaries to prevent the ingress and egress of animals. This is an increase over the current one pedestrian gate. However, the current gate is not easily accessible as it is angled towards a bank and the new gates will be easier to use. Authorising the gates would be in keeping with the principles of 'Least Restrictive Access'.
- 8.14 The Proposed Footpath is less steep than the Existing Footpath as it runs along the contours of the Mendip Hills rather than down the hill. The walker will go down the hill along Public Footpath CL8/48 which is a wider track than the Existing Footpath.
- 8.15 The Proposed Footpath crosses fields and a wooded area which will have no adverse effect on maintenance.
- 8.16 The Existing Footpath runs through the lower corner of a field prone to poaching then along a rocky track which is usually running with water draining from the fields. This means it is often slippery to traverse. The Proposed Footpath runs across more open aspects of fields and through a wooded area which will provide an improved surface and therefore improve safety for the walker.
- 8.17 The Proposed Footpath has a neutral impact on Status and Width.
- 8.18 The Proposed Footpath traverses a wooded area which holds more features of interest than the Existing Footpath, including bluebells in season.

8.19 It is considered that on balance the proposed diversion is in accordance with the Policy.

9. Risk Management

9.1 There are no significant risks associated with diverting the footpath.

10. Conclusion

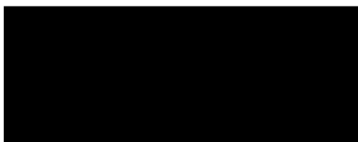
10.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposal is in line with the Public Path Order Policy.

10.2 The Diversion Order would be in the interests of the occupier.

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 a section of Public Footpath CL8/43 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



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Dated: 10/7/18

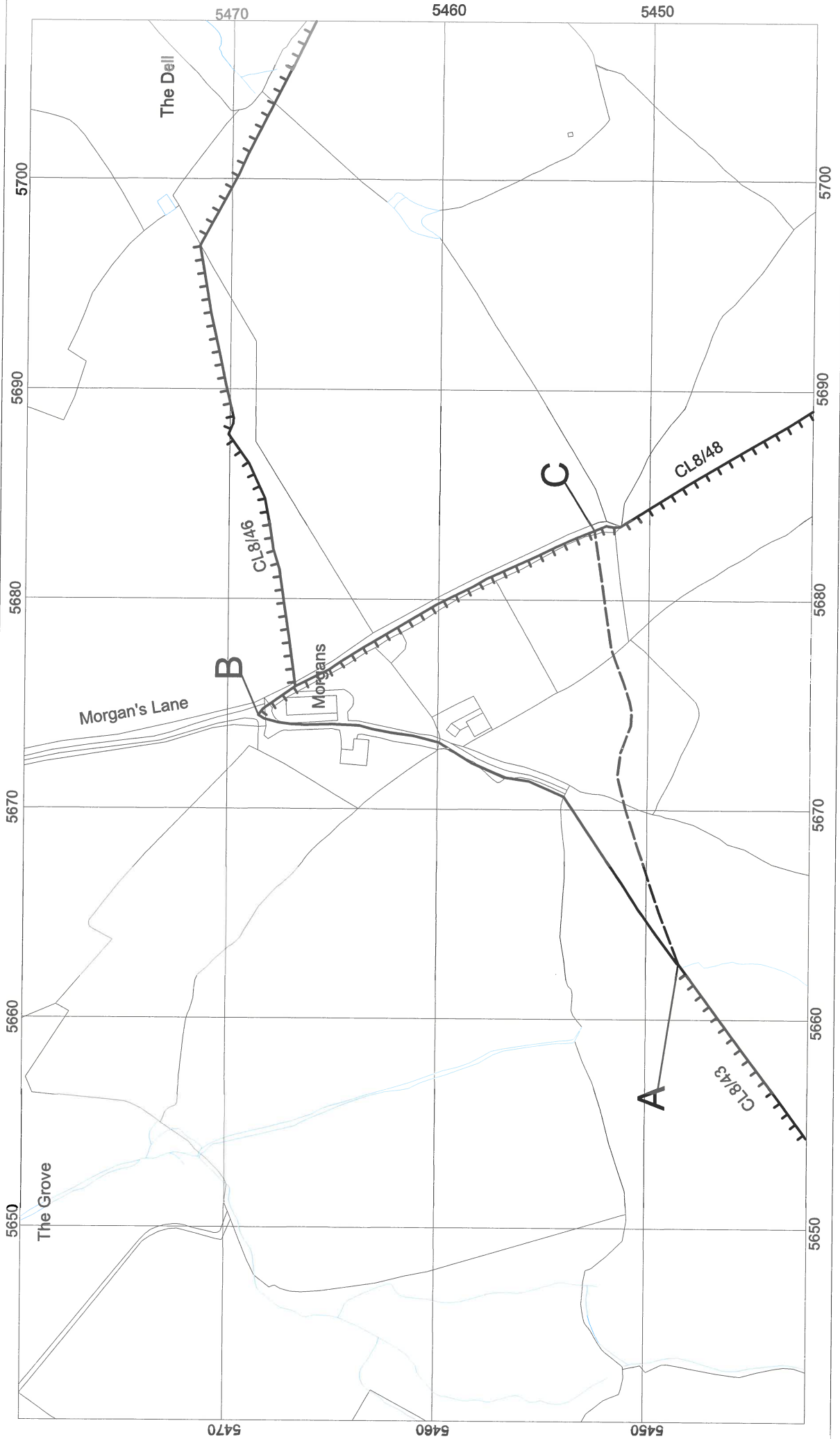
Craig Jackson – Team Manager, Highways Maintenance and Drainage

**Appendix 1 Decision Plan
Public Footpath CL8/43,
Morgans, East Harptree**

Scale 1:2500

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

A - - - - - C
A B



DECISION SCHEDULE

Part 1

DESCRIPTION OF SITE OF EXISTING PATH

The full width of a section of Public Footpath CL8/43 commencing from grid reference ST 5662 5448 (point A on the Decision Plan) and proceeding in a generally north-northeasterly direction for approximately 248 metres to a junction with Public Footpath CL8/48 and Morgan's Lane at grid reference ST 5674 5468 (point B).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from grid reference ST 5662 5448 (point A) and proceeding in a generally easterly direction for approximately 213 metres to a junction with Public Footpath CL8/48 at grid reference ST 5683 5452 (point C).

Width: 2 metres between grid reference ST 5662 5448 (point A) and grid reference ST 5683 5452 (point C).

PART 3

LIMITATIONS AND CONDITIONS

None.

