

**APPLICATION FOR A PUBLIC PATH DIVERSION  
ORDER AFFECTING PUBLIC FOOTPATH CL20/6 AT  
STOWEY CROSSROADS, STOWEY SUTTON**

**1. The Issue**

- 1.1 An application has been made by Stowey Sutton Parish Council ("the Applicant") to divert public footpath CL20/6 at Stowey Crossroads, Stowey Sutton to improve public safety when exiting the footpath and improve connectivity with other public footpaths.

**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 Public Footpath CL20/6 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 Ward Councillor has agreed to pay the cost for processing an Order including the cost of any required notices in a local newspaper. The Applicant has agreed to pay any compensation payable and any 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 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 CL20/6 is recorded on the Definitive Map and Statement which have a relevant date of 26<sup>th</sup> November 1956. The legal alignment has remained unchanged ever since.

6.2 Stowey Sutton Parish Council has proposed the diversion in the interests of the public in order to improve public safety by avoiding the necessity to walk along the carriageways of The Street or A368 Wick Road when walking from FP CL20/6 to either FP CL20/8 or FP CL20/18. The proposal will include a more accessible junction with The Street as it is not possible to access the carriageway at the current junction (point A on the Decision Plan) due to the steepness and height of the bank. Currently FP CL20/6 emerges onto A368 on a bend and the public must then walk along the carriageway of A368 where there is not a continuous verge to enter FP CL20/8. The proposed junction onto A368 is on a straight section of carriageway and opposite FP CL20/8. The proposal would provide an improved link between the public footpaths.

6.3 The Landowner has not been actively involved in the application process but is being kept informed of progress throughout.

### **6.4 Description of the Existing Footpath**

The proposal is to divert the full width of Public Footpath CL20/6 commencing from a junction with The Street at grid reference ST 5965 5997 (point A on the Decision Plan) and proceeding in a generally northerly direction for approximately 153 metres to a junction with A368 Wick Road at grid reference ST 5967 6011 (point B). This route is referred to as "the Existing Footpath".

### **6.5 Description of the Proposed Footpath**

The proposal diverts the footpath commencing from a junction with The Street at grid reference ST 5968 5994 (point C on the Decision Plan) and proceeding in a generally north westerly direction for approximately 179 metres to a junction with A368 Wick Road at grid reference ST 5957 6008 (point E). It is proposed that the width will be one metre between grid reference ST 5968 5994 (point C) and grid reference ST 5965 5997 (point D) and 2 metres between grid reference ST 5965 5997 (point D) and grid reference ST 5957 6008 (point E). This route is referred to as "the Proposed Footpath".

### **6.6 Limitations and Conditions**

No limitations or conditions are proposed. The Proposed Footpath would cross field boundaries into agricultural land and authorisation of kissing gates at point D and point E is proposed under section 147 of the Act to prevent the ingress and egress of animals.

## **7. Consultations**

- 7.1 The affected landowner, Stowey Sutton Parish Council, national and local user groups, the Ward Councillor and statutory undertakers were all consulted about the proposed diversion for a period of six weeks (“the Consultation Period”). Additionally site notices were erected at points C, A, B and E and on the Authority’s website to seek the views of members of the public.
- 7.2 In response to the consultation, some statutory undertakers said they have apparatus in the vicinity. It was confirmed that no planned works would affect any apparatus and no statutory undertakers objected to the proposal.
- 7.3 No response was received from the landowner.
- 7.4 Stowey Sutton Parish Council (the Applicant) stated *“Agreement was reached with the Council widely happy to approve the plan with one suggestion: To save cost, retain the existing gate exit that enters the layby on the street rather than exit directly onto the A368.”*
- 7.5 The local Ramblers representative stated *“The proposed changes would be very welcome. I have been involved with Bath Ramblers in footpath work at [t]his location and am relieved that the proposals will deal with the problems you mention.”* (i.e. problems of safety outlined in para 6.2).
- 7.6 No other comments were received in relation to these proposals during the Consultation Period. The Parish Council comment (para 7.4) is addressed at paragraphs 8.1 and 8.2 below.

## **8. Officer Comments**

- 8.1 The alternative route exiting through the field-gate onto The Street was discussed with the clerk to the Parish Council at a site meeting before the application was submitted. It was agreed that it was not practical to add a kissing gate at this point and the field gate was not a suitable opening for the public as it would not be easy to operate and livestock would be at risk of getting onto A368 if the gate was not secured correctly. If the public were to use the track from the field gate it would result in pedestrians exiting onto The Street close to the crossroads where there is no pavement and poor visibility for pedestrians and drivers. The proposed exit onto A368 was considered more suitable because it aligns with FP CL20/8; it is on a straight stretch of road so visibility for pedestrians and drivers is improved and the verge on A368 is wider at this point providing a safer refuge. It was therefore agreed

that the application route would exit straight onto the verge of A368 opposite FP CL20/8.

- 8.2 The diversion is proposed in the interest of the public to improve safety at the exit at the northern junction, as set out in paragraph 8.4, and to improve connectivity as set out in paragraph 8.5. The Parish Council's request during the Consultation Period to change the Proposed Footpath route would diminish the safety and connectivity aspects and this option has therefore not been pursued.
- 8.3 It is recommended that the various tests outlined in section 5 above are considered in turn.
- 8.4 **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:** It is proposed to make the order in the interest of the public, in order to improve the safety of walkers by avoiding the necessity to walk along the carriageway of The Street or A368 when walking from FP CL20/6 to either FP CL20/8 or FP CL20/18. The proposal includes a more accessible junction with The Street which is opposite FP CL20/18 and a junction with A368 which is opposite FP CL20/8. This test should therefore be considered to have been met.
- 8.5 **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 will start and finish on the same two highways; the start of the footpath is approximately 50 metres south east of its current start, but is closer to the start of FP CL20/18 and closer to the beginning of a footway which runs along The Street into the village; the finish of the footpath is approximately 100 metres west of its current finish, but is closer to the start of FP CL20/8. The Proposed Footpath will improve the route of the long distance promoted 'Three Peaks Circular Walk' which currently directs the walker from Stowey village along The Street which is a narrow unpaved carriageway with high walls on both sides and subsequently the walker is at risk from passing traffic. It will therefore provide a more convenient link to FPs CL20/18 and CL20/8; this test should therefore be considered to have been met.
- 8.6 **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 Proposed Footpath is approximately 26 metres longer than the Existing Footpath. However, this is because the proposal includes an extra section of footpath between point C and point D which would otherwise have to be negotiated on the carriageway of The Street. The Proposed Footpath will provide a less steep route into the field at point D as the current entrance at point A is impassable due to a steep bank. The terrain is similar over the field. The Proposed Footpath will provide a more convenient link to FPs CL20/18 and CL20/8 and improve the route

within the 'Three Peaks Circular Walk'. This test should therefore be considered to have been met.

- 8.7 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.**
- 8.8 Public enjoyment of the Path as a whole:** The Proposed Footpath crosses improved terrain at its junction with The Street and provides safer junctions via a refuge at The Street and a wider verge at A368. It improves connectivity within this section of the Three Peaks Circular Walk which will take the walker away from the carriageway (The Street). The effect on public enjoyment of the Proposed Footpath is therefore improved; this test should therefore be considered to have been met.
- 8.9 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.
- 8.10 Effect on land affected by any proposed new path, taking into account the provision for compensation:** The section of Proposed Footpath from point D to point E is under the same land ownership as the Existing Footpath. The section of Proposed Footpath from point C to point D is over unregistered land. The Applicant has agreed to pay any compensation which becomes payable as a consequence of the coming into operation of the Proposed Footpath although no adverse comments were received during the informal consultation in this regard; this test should therefore be considered to have been met.
- 8.11 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:** The diversion will have no adverse effect on farming, forestry or biodiversity. The exit onto The Street at point C includes stone steps to accommodate the difference in height of the ground levels; however, this difference in levels would be encountered at point A if the diversion is not implemented and a slope would not be practical at either point. The diversion will provide a safer exit onto The Street being closer to FP 20/18 and the pavement leading into Stowey and where there is a refuge from traffic. A safer exit onto A368 is proposed which is closer to FP 20/8 and where there is a wide verge. The diversion will therefore have a positive impact on those with mobility and visual impairments. The proposed diversion has a neutral effect on those with other impairments.
- 8.12 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.**

- 8.13 The diversion will provide improved connectivity as the start and finish of the Proposed Footpath will be aligned with FPs CL20/8 and CL20/18. The diversion will provide an improvement to the Three Peaks Way which currently directs the walker along The Street, a narrow carriageway with no footway.
- 8.14 The diversion will provide improved visibility at the junction with A368 and improved access to the junction with The Street. It will therefore have a positive impact on those with mobility and visual impairments. The proposed diversion has a neutral effect on those with other impairments.
- 8.15 There are two wooden stiles on the Existing Footpath. It is intended to authorise kissing gates at points D and E to prevent the ingress and egress of animals. Authorising the gates would be in keeping with the principles of 'Least Restrictive Access'.
- 8.16 The diversion provides an improved access to The Street via stone steps at point C to accommodate the difference in height of the ground levels; however, this difference in levels would be encountered at point A if the diversion is not implemented and a slope would not be practical at either point. It is not possible to access to The Street at point A as there is a vertical bank of approximately 3 metres in height and no refuge from the carriageway.
- 8.17 The Existing Footpath and the Proposed Footpath between point D and point E cover similar gradients and will have similar maintenance issues.
- 8.18 Fencing and levelling of the site of the additional Proposed Footpath between point C and point D is being carried out to improve the safety of the public. Future maintenance is expected to be minimal.
- 8.19 The width of the Proposed Footpath is to be 2 metres wide between point D and point E. The width of the Proposed Footpath is limited to 1 metre wide between point C and point D because the width is limited by the highway carriageway and a steep bank. The reduced-width section will be levelled and fenced to provide better protection from the steep bank. The reduced-width section is an extra section of footpath and should not be compared with the Existing Footpath width which will be maintained on the section from point D to point E. The alternative for the public for this section of Proposed Footpath is walking along the highway carriageway of The Street which is very narrow with steep sides and is not as suitable as the Proposed Footpath.
- 8.20 The diversion does not have any overall impact on Maintenance, Status or Features of Interest.
- 8.21 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.

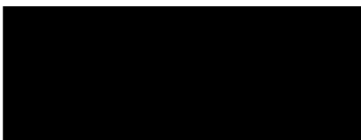
10.2 The Diversion Order would be in the interests of the public.

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 Public Footpath CL20/6 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



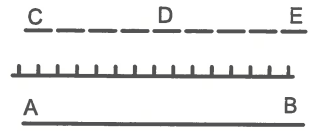
Dated: *10/07/18*

Craig Jackson – Team Manager, Highways Maintenance and Drainage

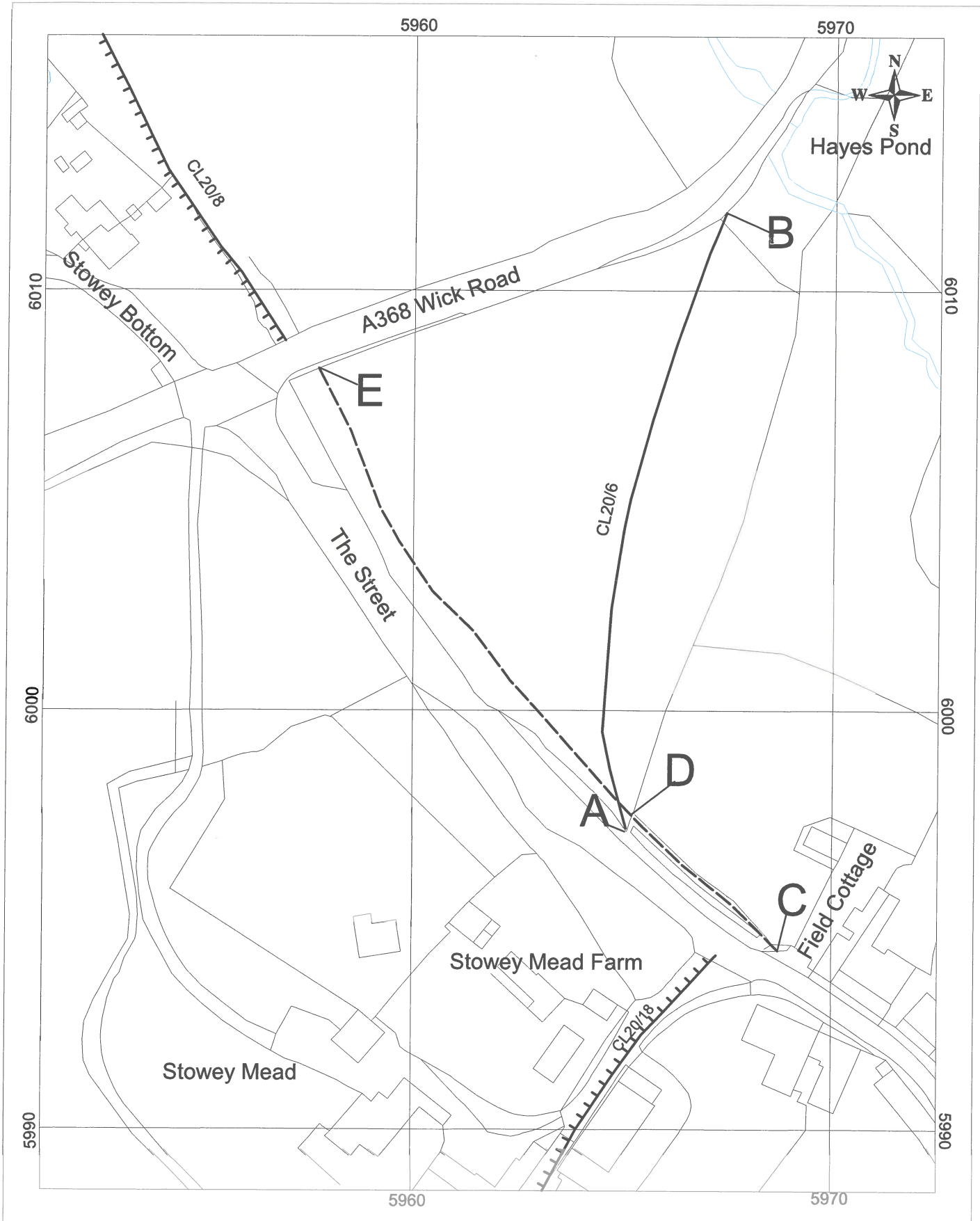


**Appendix 1  
Decision Plan  
Public Footpath CL20/6,  
Stowey**

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



Scale: 1:1250





## **DECISION SCHEDULE**

### **PART 1**

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

The full width of Public Footpath CL20/6 commencing from a junction with The Street at grid reference ST 5965 5997 (point A on the Decision Plan) and proceeding in a generally northerly direction for approximately 153 metres to a junction with A368 Wick Road at grid reference ST 5967 6011 (point B).

### **PART 2**

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

A public footpath commencing from a junction with The Street at grid reference ST 5968 5994 (point C on the Decision Plan) and proceeding in a generally north-westerly direction for approximately 179 metres to a junction with A368 Wick Road at grid reference ST 5957 6008 (point E).

Width: 1 metre between grid reference ST 5968 5994 (point C) and grid reference ST 5965 5997 (point D).

2 metres between grid reference ST 5965 5997 (point D) and grid reference ST 5957 6008 (point E).

### **PART 3**

#### **LIMITATIONS AND CONDITIONS**

None.

