

1. The Issue

- 1.1 A proposal has been made to divert a section of Public Footpath CL16/56 in the Parish of Paulton to move this section of the path away from the rear gardens of two residential properties.

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 CL16/56 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 Bath and North East Somerset Council ("the Authority") will absorb 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 Planning 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. 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 proposal 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 proposal 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 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). 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 proposal 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

- 6.1 Public Footpath CL16/56 is recorded on the Definitive Map and Statement which has a relevant date of 26 November 1956.
- 6.2 The Existing Footpath passes through the rear gardens of Numbers 16 and 17, Westview before turning westwards across agricultural land. The proposed diversion would take the footpath away from these two gardens by re-routing directly onto the same plot of agricultural land (but along a fenced strip of land within this plot which is not actually used for agriculture).
- 6.3 **Description of the Existing Footpath**
The proposal is to divert the full width of the section of Public Footpath CL16/56 commencing from grid reference ST 6436 5638 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 60 metres to grid reference ST 6442 5637 (point B on the Decision Plan), and then turning in a generally northerly direction for approximately 8 metres to grid reference ST 6442 5638 (point C on the Decision Plan), which would be stopped up. This route is referred to as the "Existing Footpath".
- 6.4 **Description of the Proposed Footpath**
The proposed new route commences from grid reference ST 6436 5638 (point A on the Decision Plan) and proceeds in a generally easterly direction for approximately 58 metres to grid reference ST 6442 5638 (point C on the Decision Plan). The width would be two metres throughout. This route is referred to as the "Proposed Footpath".
- 6.5 **Limitations and Conditions**
No limitations or conditions are proposed.

7. Consultations

- 7.1 As the Proposed Diversion is in the interests of both the landowners and the public, no informal consultation has been carried out prior to making an order.

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 passes through gardens of Numbers 16 & 17, Westview. As the proposed diversion would take the footpath out of these gardens, clearly it is expedient to divert the path in the interests of the owners of these two properties. This first test is therefore 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 will have the same termination points as the Existing Footpath so this second test is also 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 overall length of the diverted route will be 10 metres shorter than the length of the existing route which is considered an insignificant decrease in the context of whole walks which people will undertake within the wider public rights of way network. There will no change in the difficulty of the walking as a result of the diversion. It therefore follows that the Proposed Footpath is not substantially less convenient to the public and this third 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:** It is considered that the Proposed Footpath will be more enjoyable than the Existing Footpath for the public to walk as the route will no longer pass through two residential gardens. There will therefore be a positive effect on public enjoyment overall.
- 8.7 **Effect on other land served by the existing footpath and land affected by the proposed footpath:** Two separate landowners will benefit from the removal of the Existing Footpath as the public right of way will no longer pass through their gardens. Similarly, the Proposed Footpath will run along a strip of land adjoining agricultural land but which is not itself used for agriculture. Consequently, it is considered that the Proposed Footpath will not have an adverse effect on the land that it will pass through.
- 8.8 **Effect on land affected by any proposed new path, taking into account the provision for compensation:** The owners of the land crossed by the Proposed Footpath have consented to the diversion proposals and have not expressed any intention to claim compensation. In the event that they should subsequently express a desire to do so, they would need to show either that the value of their land had depreciated as a consequence of the diversion, or that the enjoyment of their land had been disturbed. It is not believed that the Proposed Footpath will have either of these effects on the relevant land.
- 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:** As the land crossed by the Proposed Footpath is not itself used for agriculture there will be no effect on farming. There will be no effect on forestry either as neither the Existing nor Proposed Footpath cross any woodland. There will be no effect on biodiversity, nor on members of the public with disabilities.
- 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 As the Proposed and Existing Footpaths will have the same start and finish points, there will be no effect on connectivity.
- 8.12 The diversion will have a neutral effect on people with disabilities.
- 8.13 There is no difference between the Existing and Proposed Footpaths in terms of the number of entry and exit points into/from agricultural land so the

diversion will have a neutral effect on the number of gates required. It will however eliminate two gaps when passing between residential gardens so will have a positive effect on the route in this regard.

- 8.14 There is no difference in gradient between the Proposed and Existing Footpaths.
- 8.15 It is not considered that the Proposed Footpath will require any more maintenance than the Existing Footpath.
- 8.16 The Proposed Footpath will have neutral impact on Safety and Status.
- 8.17 The Existing Footpath is considered 1.8 metres wide. The Proposed Footpath will be two metres wide.
- 8.18 The Proposed Footpath will not remove public access from any feature of interest or place of resort, nor will it diminish the quality or diversity of any views.
- 8.19 It is considered that on balance the proposed diversion is in accordance with the Policy.

9. Risk Management

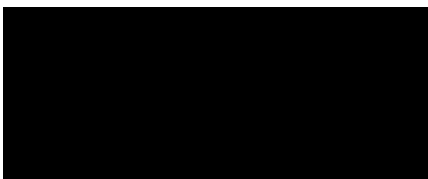
- 9.1 There are no significant risks associated with diverting the footpath.

10. Conclusion

- 10.1 It is considered that the relevant statutory tests for making a Diversion Order under Section 119 of the Act 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 owners of the land.
 - 10.3 The Order should be made as proposed.
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AUTHORISATION

Under the authorisation granted by the Council on 21st July 2022, the Team Leader: Place Legal Services is hereby requested to seal an Order to divert a section of Public Footpath CL16/56 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.

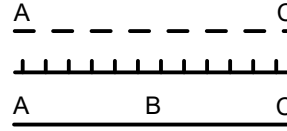


Dated: 13/11/2023.

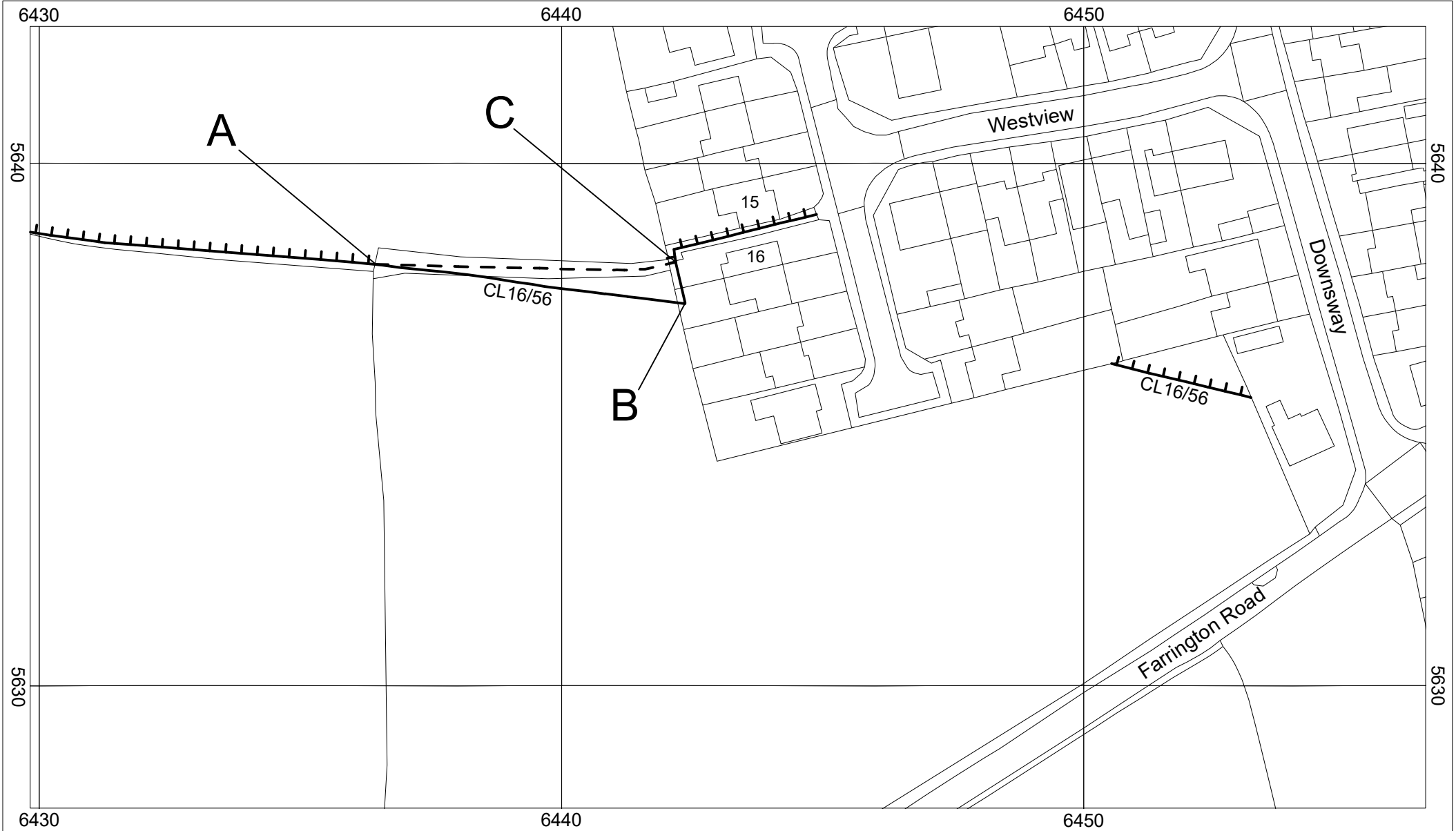
Craig Jackson – Team Manager, Highways Maintenance and Drainage

**Appendix 1 - Decision Plan
Public Footpath CL16/56,
Westview, Paulton**

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



Scale 1:1000



APPENDIX 2 - DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of Public Footpath CL16/56 commencing from grid reference ST 6436 5638 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 60 metres to grid reference ST 6442 5637 (point B on the Decision Plan), and then turning in a generally northerly direction for approximately 8 metres to grid reference ST 6442 5638 (point C on the Decision Plan)

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from grid reference ST 6436 5638 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 58 metres to grid reference ST 6442 5638 (point C on the Decision Plan).

Width: 2 metres between grid references ST 6436 5638 (point A on the Decision Plan) and ST 6442 5638 (point C on the Decision Plan).

PART 3

LIMITATIONS AND CONDITIONS

None.