

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath (FP) BA19/22 at Skylark Farm, Peasedown St John. The existing FP runs between two sets of poultry houses which causes issues for farm management when agricultural machinery is used during the chicken rearing process. The landowner wishes to divert the FP away from the farm workings onto a route through woodland and grassland.
- 1.2 A pre-order consultation was held between 24/4/2021 and 22/5/21. One member of the public objected to the suitability and necessity of diverting the Proposed FP. The local Ramblers representative was concerned regarding the Proposed FP being close to a steep drop on the field boundary edge. After the consultation period, the adjoining landowner expressed concerns regarding the nearness of the Proposed FP to his land, where a manège has been created in the corner of the field. Alternatives were discussed and the objector and adjoining landowner were invited to site meetings. The objector/member of the public did not respond. Site meetings were held with the Farm Manager and the adjoining landowner. The Authority decided to amend the Proposed FP, siting it approximately 18 metres away from the boundary with the adjoining land. The public path diversion order was made under section 119 of the Highways Act 1980 on 13th January 2022. A total of 8 letters/emails were received from members of the public regarding the order. One objection was withdrawn after clarification of the proposal. One email was from a Ward Councillor asking for clarification. One email was from an interested party regarding restricting the public from walking outside of the public footpaths in the area and therefore not a representation or objection. Five emails/letters were objections relating to the effect on the manège on the adjoining land. These responses to the order are addressed at Section 10. Letters/emails were sent to the objectors explaining the options available to the Authority, as set out in Section 12. A telephone call was made to the main objector/adjoining landowner to see if any further discussion was acceptable or further clarification could be made but it was clear that the objections would not be withdrawn.
- 1.3 The Order must therefore be referred back to the Team Manager - Highways Maintenance and Drainage to consider the matter in light of those objections. In order to proceed with the Order it must be referred to the Secretary of State for Environment, Food & Rural Affairs for determination. The Authority must therefore decide whether to proceed with the Order.

2. Recommendation

- 2.1 That the Team Manager - Highways Maintenance and Drainage grants authorisation to forward the Public Path Diversion Order to the Secretary

of State for Environment, Food & Rural Affairs for determination on the understanding that the Authority will take a neutral stance should a public inquiry be required. The Order if confirmed will divert Public Footpath BA19/22 as described in the Order and shown on the Order Map at Appendix 1.

3. Financial Implications

- 3.1 The Applicant has paid the cost for processing an Order and the cost of any required notices in a local newspaper. Should an Order be confirmed, the Proposed Footpath will be maintainable at public expense.
- 3.2 Should the Team Manager – Highways Maintenance and Drainage 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, which may be by holding a Public Inquiry, by arranging a hearing or by written representations. The Authority would take a neutral stance and rely on its Statement of Grounds to be taken as the Authority’s Statement of Case. The Applicant has agreed to provide a professional or legal expert to present the case if a Public Inquiry is held.

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 must consider the application in accordance with the principle of proportionality. The Authority must 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 the diversion will have on public enjoyment of the path as a whole; the coming into operation of the order would have as respects other land served by the existing path and on land affected by any proposed new path and any land held with it, taking into account the provision for compensation** and
 - should consider any material provision of the Joint Rights of Way Improvement Plan.
- 5.5 The Authority must also give due regard to the effect the diversion will have on
- the needs of agriculture (including the breeding or keeping of horses) and forestry,
 - the desirability of conserving flora, fauna and geological and physiographical features and
 - the effect the path would have on members of the public with protected characteristics under the Equality Act Act 2010.
- 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,

5.8 The Authority will consider the effect on Climate Change.

6. Background for Making the Order

6.1 Public Footpath BA19/22 is recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956. A section of the FP was diverted in 2017 from a line that went through the poultry houses to a line between the existing poultry houses but over four flights of steps (over a bund on the northern boundary of the poultry farm). This further application is to divert the FP away from the steps and poultry houses altogether and provides a more commodious route to follow. After the pre-order consultation a decision was made to start the diversion approximately 18 metres further north of the initial proposal to alleviate safety concerns for the public and users of the manège on the adjoining land. The manège is approximately 24 metres from the Proposed FP. The existing definitive line limits accessibility because of the steps. Farming operations are held in close proximity to the Existing FP. The Proposed FP is on a less steep line skirting below the farm buildings and yards, providing a more pleasant walk.

6.2 Description of the Route to be Diverted

The full width of the section of public footpath BA19/22 commencing from grid reference ST 7060 5575 (Point A on the Order Map) and continuing in a generally north westerly direction for approximately 333 metres to a junction with Woodborough Farm Road and FP BA19/21 at grid reference ST 7051 5606 (Point B on the Order Map) (referred to as “the Existing FP”).

6.3 Description of the Proposed Footpath

A section of public footpath commencing from grid reference ST 7060 5575 (Point A on the Order Map) and continuing in a generally north easterly direction for approximately 212 metres to a junction with FP BA19/21 at grid reference ST 7074 5590 (Point C on the Order Map) (referred to as “the Proposed FP”).

6.4 The Proposed FP will be 2 metres wide.

6.5 **Limitations and Conditions** - The Proposed FP will be created without any limitations or conditions.

7. Pre-order Consultation

7.1 Affected landowners, Peasedown St John Parish Council, national and local user groups, the Ward Councillors and statutory undertakers were all consulted for a period of four weeks between 24th April 2021 and 22nd May 2021. Additionally, site notices were erected at either end of the section of the Existing and Proposed FP and on the Authority’s website to seek the views of members of the public. The consultation showed the diversion commencing at point X on the Decision Plan (Decision Plan at Appendix 2), immediately turning eastwards after the field boundary at grid reference ST 7060 5574. However, after the pre-order

consultation, a decision was made to start the diversion approximately 18 metres further north at point A at grid reference ST 7060 5575.

8. Officer Comments Regarding Making the Order

- 8.1 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 paths in the interests of the public and/or of the owner, lessee or occupier of the land crossed by the path:** The Existing FP runs between poultry houses creating issues for farm management, creating a danger from agricultural machinery movement, breaches to biosecurity and site security which are exacerbated by the public being able to walk through the site at any time of day or night. The applicant, as landowner, has requested the diversion to improve the management of the farm by taking the footpath away from the poultry houses and yards, thereby allowing better biosecurity and site security and removing danger to the public from farm machinery. The diversion is proposed in the interest of the landowner to improve farm management. The diversion of the Proposed FP is therefore expedient in the interests of the landowner and 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 Existing FP and Proposed FP start at the same point on the same path. The Proposed FP joins the same path (FP BA19/21) as the Existing FP at a point approximately 279 metres further south east. The walker can then walk along the level surface of FP BA19/24 across the same field as the Existing FP to the original junction with Woodborough Farm Road. However, if the walker wishes to walk along FP BA25/15 the termination point is substantially more convenient than the existing termination point, as the route is more direct, cutting out approximately 400 metres than if walked via the existing FP BA19/22 and FP BA19/2. Alternatively the walker can avoid walking on a road without a pavement to reach FP BA25/15 (using FP BA19/23 from its junction with FP BA19/22 and Gassons (class 4 highway with no pavement)). It is considered the termination point will therefore be substantially as easy/convenient for the public to use as the existing termination point. This part of the test should therefore be considered to have been met.
- 8.4 **The Authority must give due regard to the effect the diversion will have on the needs of agriculture (including the breeding or keeping of horses) and forestry, the desirability of conserving flora, fauna and geological and physiographical features and the effect the path would have on members of the public with protected characteristics under the Equality Act, Act 2010.**
- 8.5 The Proposed FP will have no adverse effect on forestry or biodiversity, as any loss of biodiversity on the Proposed FP will be

compensated by improved biodiversity over the field where the Existing FP will be stopped up. The Proposed FP will have a positive effect on farming by taking the route away from poultry houses and yards. The Authority considers it will have no effect on the keeping or breeding of horses, as the Proposed FP is approximately 24 metres from a field which may be used by horses. This is disputed by the objectors to the order and is addressed at Section 10 (Objections to the Order). Path users with mobility and sight impairments will benefit from avoiding 4 flights of steps and from removal of 2 kissing gates currently at field boundaries, although there is still a kissing gate on FP BA19/21. Path users with mobility, hearing and sight impairments will also benefit from being away from farm machinery by not having to walk between the poultry houses.

- 8.6 **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.**
- 8.7 Connectivity is not affected as the walker can still walk to the start and finish of the Existing FP. The Proposed FP improves connectivity between south and northeast, by providing a more direct link to FP BA23/15 which avoids walking on a class 4 highway without pavements (Gassons) if using FP BA19/23.
- 8.8 Path users with mobility and sight impairments will benefit from a more level route on the Proposed FP, rather than over 4 flights of steps. Path users with mobility, hearing and sight impairments will benefit from not having to walk through farmyards where farm machinery is regularly used. There will be no kissing gates on the Proposed FP but there is one kissing gate on FP BA19/21, which is a reduction from the two currently sited on the Existing FP. The Proposed FP is a more straightforward route providing improvement for path users with mobility impairments. The proposed diversion has a neutral effect on those with other impairments.
- 8.9 The gradient of the Proposed FP is an improvement over the gradient of the Existing FP which runs over 4 flights of steps.
- 8.10 Future maintenance will be improved as there are no steps or field boundaries on the Proposed FP. Once the Proposed FP is established it should require less maintenance than the Existing FP.
- 8.11 Safety will be improved as the Proposed FP does not run through farmyards where farm machinery is regularly used. Four flights of steps being removed from the route will improve pedestrian safety.
- 8.12 Views over the valley from the Proposed FP will replace walking between Poultry Houses providing an additional feature of interest.
- 8.13 The Proposed FP does not have any impact on width or status.

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

9. Climate Change

9.1 Public rights of way are a key resource for shifting to low-carbon, sustainable means of transport. The proposals are part of the ongoing management of the network and therefore contribute towards helping to tackle the Climate Emergency.

10. Objections to the Order

10.1 The Public Path Diversion Order was sealed on 13th January 2022. The order was advertised between 27th January 2022 and 24th February 2022. A total of 8 emails were received including 6 objections. One email related to walking on private land and one email requested information. One objection was withdrawn after an explanation was provided, as the objector had misunderstood the proposal.

10.2 The remaining 5 objections all relate to the effect the Proposed FP would have on the adjoining land which is set out as a manège. The objections can be found at Appendix 2. The objections relate to privacy, safety of horseriders and horses, human rights, the effect on the adjoining land, equalities impact and consideration of the Authority's Public Path Order Policy. These are discussed further below. The italic print is representative of the objections in each case, which are repetitive.

10.3 Misunderstandings – Some of the comments in the objections are a result of misunderstandings. The section of Remaining FP (south of point A on the Order Map) and FP BA19/23 are not affected by the Diversion Order and are both closer to the manège than the Proposed FP. The Remaining FP runs adjacent and parallel to the manège and rises above the height of the manège. This will remain as a FP and walkers will continue to walk approximately 2/3 metres away from the manège and also across the field that the manège is in when using FP BA19/23. Discussions were held with the adjoining landowner and the prospective administrator of the manège before making this diversion order and they were advised that a different diversion could be considered separately to this current proposal as long as it fitted the legislative and policy criteria. It was pointed out that the existing diversion would need to be implemented first in order for their suggestions to be possible as they wished it to join up with the Proposed FP, which doesn't currently exist as a public footpath.

10.4 There is also a misunderstanding as to whether the manège is prospective or existing. There is no evidence of the manège being currently or historically used for its purpose but one objector says it has existed since 2004. Other objectors refer to using it in the future. The current owner has owned the land since 2019. There has been no evidence of horse-training activity throughout 2021.

10.5 Privacy – *“the invasion of our privacy is of great concern in regards to schooling and unlimited public viewing”* (i.e. of the manège). The Proposed FP is approximately 18 metres from the boundary of the objector’s land and a further approximately 6 metres from the manège. The total distance is therefore approximately 24 metres away and at a height change of approximately 3 metres from the boundary and a total of approximately 6 metres from the manège. The Remaining FP is approximately 3 metres in distance and height from the manège and FP BA19/23 is in the same field as the manège at approximately the same height as the manège. These FPs are currently used by the public and will remain for public use. It is not therefore, considered, that there will be an additional invasion of privacy due to the diversion of the FP.

10.6 Safety of Horseriders and Horses – *“Our main concern is that with the proposed diversion there will be a serious risk of spooking the horses within the ménage and therefore a risk to life (falls from height). Which fails the risk assessment. With the proposed path causing a failure of a risk assessment for the ménage, due to spooks. The result of a risk assessment shows 8 out of 20 for probability and 4 out of 5 for outcome (fall from heights). There for my ménage is not fit for purpose.”* *“The authority has failed in its duty to pass its own imposed tests. It is the opinion of the officers that the failure of obtaining a risk assessment for the ménage is of no consequence. This shows a failure of due diligence on their part and no consideration for my property. Which will negate getting public liability insurance on the ménage.”* *“One of the main reasons we chose Skylark Farm is because of how rural, peaceful, safe and quiet it’s situated and I felt that I can do what I do to the best of my ability and feel I’m doing it safely for everyone, but with that being said I feel a ‘public footpath’ Directly overlooking a place of a ménage is just not going to work, the risk factors of ‘HEALTH AND SAFETY ACT’ to all the risks are too high”.* *“During the consultation stage I voiced grave concerns over the proposed diversion via email and in a meeting ... The new path would remove all privacy from the existing manège / training area that has been in situ since 2004. Having walkers in the direct eye line of young horses being trained created a significant risk to both horse and riders. I have asked to see a risk assessment specific to the use of the manège in relation to this new diversion but none was provided. I believe that this danger should be seriously considered when looking at potential solutions to the diversion. I would not be able to continue with the lease of this facility if the proposal goes ahead as I would not be able to guarantee the safety of myself, my daughter or my animals.”* The effect the Proposed FP will have on the manège is addressed at paragraph 9.8. The Authority has carried out a risk assessment covering all those at risk, not just the manège users and it considers that the position of the Proposed FP is safe with regard to public use and use of the adjoining land. The Proposed FP is approximately 18 metres from the boundary of the objector’s land and a further approximately 6 metres from the manège. The Remaining FP to the south runs adjacent to the proposed manège approximately 3 metres away. The Remaining FP and FP BA19/23 are both closer to the manège than the Proposed FP. The objectors are concerned about the height of the Proposed FP in

relation to the manège. However, again, the Remaining FP is above the height of the manège and only approximately 2/3 metres away. The Remaining FP and FP BA19/23 are not currently fenced off from the manège. These FP's are currently used by the public and will remain for public use. There have been no reports brought to the attention of the Authority since 2004 regarding issues relating to the Existing FP, Remaining FP or FP BA19/23 and horses or horseriders' safety at the manège. This suggests the Existing FP, Remaining FP and FP BA19/23 do not pose a risk to the manège, and it is therefore difficult to understand why the Proposed FP will impose a greater risk as it is significantly further away in distance and in height than the current FPs.

10.7 Human Rights – *“The authority has prioritised the safety of footpath users over the equestrian users of the manage. This shows discrimination and a failure in Article 14 of the Human Rights Act and fails to protect my property. (Article 1 of the first protocol) The mènage is also used by children aged 8 years right up to 60 years old, to help teach and give people back the confidence to ride safely again with the footpath over looking I fear will become an issue to our training which would come under ‘THE HUMAN RIGHTS ACT SECTION 4 & 10”* The Authority has considered the application in accordance with the principle of proportionality, giving consideration to the protection of individual rights and the interests of the community at large and balancing any likely private harm against the wider public good. However, the Authority disputes that the manège will be so affected by the Proposed FP, and therefore considers that it is expedient for the diversion order to be made.

10.8 The Effect on Adjoining Land - *“It will have a negative effect upon my land, the Order has not regarded the effect imposed upon land affected by any new footpath. Compensation has not been considered and material provision has been said is down to me (the effected landowner)... My land is seriously affected, as it has made my menage unsafe and not fit for purpose. My land IS affected, so there is an adverse effect and compensation has not been satisfied. The opposed public footpath will highly affect a working Mènage in the equestrian industry. The authority has failed to look at all of the options ... This diversion will make the facility unfit for its primary use and affect its rental/ sale potential going forward.”* The effect on adjoining land is addressed at paragraph 9.8. The Applicant has been willing to discuss the matter of alleviating the perceived adjoining landowner's issues or compensation but the Objector/Landowner has not wished to engage with this process. s119 Highways Act 1980 states that the Secretary of State should be satisfied that it is expedient to confirm the order **having regard to the effect which...any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it...account being taken of the provisions as to compensation.** Compensation is payable under section 28 as applied by section 121(2) Highways Act 1980. It is not clear from the legislation in bold print that compensation would be payable to an adjoining landowner. However, a claim must

be made in writing within six months from the coming into force of the order in respect of which the claim is made.

10.9 Equalities Impact – *“The criteria ‘Equalities impact’ has failed. I am now being discriminated against, as the new path will have a negative impact upon my property”* The Equalities Impact assessment considers gender, disability, age, race, sexual orientation and religion/belief i.e. the protected characteristics under the Equality Act 2010. The assessment identified a positive outcome for those with mobility, hearing and sight impairments and a neutral impact on those with other impairments or other protected characteristics. A negative impact on property is not relevant to equalities impact but has nevertheless been addressed elsewhere within this report.

10.10 Public Path Policy – *“This Public Path Order Policy has not been met. Between discrimination and Safety concerns regarding the neighbouring affected land.”* The Authority’s Public Path Order Policy was considered before making the Order and is again considered at section 8 above.

11. Officer Comments Regarding Confirming the Order

11.1 **The diversion must be expedient in the interests of the person(s) stated in the Order:** please see Paragraph 8.2 above.

11.2 **The path must not be substantially less convenient to the public as a consequence of the diversion:** Matters such as ease of use, length, difficulty of walking and the purpose of the path pertain to the convenience to the public.

11.3 How the proposal affects the length depends where the walker wishes to go. A walker wishing to reach Woodborough Farm Road from point A (south-north) will have a further approximately 158 metres to walk. However, a walker wishing to reach FP BA23/15 from BA19/24 (avoiding using the class 4 highway) (southwest-northeast) will have approximately 161 metres less distance to walk. The Existing FP goes over 4 flights of steps and passes through two field boundaries with kissing gates whereas the Proposed FP has a gentle slope and passes through no field boundaries, therefore making the terrain an improvement for the walker. (One kissing gate is situated on FP BA19/21 near point C). The purpose of the path is likely to be both leisure and to get from A to B. The extra distance would not adversely affect a leisure walker taking into account the wider Rights of Way network. If a walker is walking from Braysdown to Writhlington (a more purposeful walk mentioned by an objector at the informal consultation stage), the increase in length of approximately 158 metres, over a walk of approximately 2 kilometres is still not proportionally large. The easier terrain and less field boundaries may counteract any inconvenience of extra distance; it is considered, on balance, that the Proposed FP is easier to use and therefore not substantially less convenient to the public

as a consequence of the diversion. This part of the test should therefore be considered to have been met.

11.4 It must be expedient to confirm the Order having regard to the effect the diversion will have on public enjoyment of the path as a whole; the coming into operation of the order would have as respects other land served by the existing path and on land affected by any proposed new path and any land held with it, taking into account the provision for compensation.

11.5 Public enjoyment of the Path as a whole: The Existing FP runs between poultry houses which carry an associated odour and farm machinery is regularly in use in the vicinity of the Existing FP. The Existing FP runs over a bund necessitating negotiating two flights of steps and a further two flights of steps between the poultry houses. The Proposed FP runs on a gentle slope through a wooded area with improved views over the valley. The topography is therefore improved and consequently walking the Proposed FP should be more enjoyable for the public. Walkers will still be able to walk in the field to the north of the Poultry houses by walking along BA19/21; this test should therefore be considered to have been met.

11.6 Effect the coming into operation of the order would have as respects other land served by the existing footpath, taking into account the provisions as to compensation: The Proposed FP will improve farming purposes and it is considered the effects are beneficial to land served by the Existing FP. The section of Existing FP to the north of the Poultry houses will revert to the landowners use and benefit; this test should therefore be considered to have been met.

11.7 Effect a new public right of way would have as respects the land over which the right is so created and any land held with it, taking into account the provision for compensation: The Proposed FP and land held with it is owned by the Applicant who wishes the Proposed FP to come into effect. The Authority therefore considers this test has been met.

11.8 The objectors consider the adjoining land to the south of the Proposed FP is affected. This is also considered at section 10 – Response to the Order. The objectors' issues are with the effect on adjoining land but the Authority disputes whether this land is affected by the Proposed FP in the way they state. This matter was given consideration by the Authority before making the order and the original proposal was moved approximately 18 metres further north of the manège before making the order, totalling approximately 24 metres from the manège, as a consequence. Please see the map at Appendix 4 showing the contour lines and position of the manège and photographs at Appendix 5 showing its position. The manège is in the northwest corner of the adjoining land to the south of the Proposed FP. The land slopes up from south to north. The surface of the manège has been cut in at the north end and raised up at the south end, to make it flat. The manège is

approximately 6 metres from the boundary to the north and a further approximately 18 metres from the Proposed FP. The unaffected remainder of Public Footpath BA19/22 (“the Remaining FP”) south of the Proposed FP runs alongside the manège on the natural ground level, approximately 2/3 metres away. The contour line running below the manège is 115m (above sea level); through the manège it is approximately 120m; below the Proposed FP it is approximately 125m; between the poultry sheds it is approximately 130m. The rise levels out at approximately 140m above the poultry sheds. The height change on the land from the manège to the Proposed FP is approximately 5/6 metres over a distance of approximately 24 metres. The height change from the manège to the Remaining FP is approximately 3 metres over a distance of approximately 2/3 metres. The Authority therefore considers that the change in height between the manège and the Proposed FP of approximately 6 metres over approximately 24 metres is less likely to affect users of the manège than the Remaining FP which has a change of height of approximately 3 metres over a distance of approximately 3 metres. The distance of approximately 24 metres from the Proposed FP to the manège is also less likely to affect users of the manège than the Remaining FP which is approximately 2/3 metres away. The manège is not fenced from the Remaining FP by choice of the landowner. It appears that the change in height between the manège and the Remaining FP and the lack of fencing between the manège and the Remaining FP has not affected the manège in the past or in the planning/risk assessment for the proposed forthcoming use of the manège. The objectors have referred to “*compensation not being considered*” but the Authority considers that compensation relates to **“the land over which the right is so created and any land held with it”**. As stated in paragraph 10.8, it is not clear from the legislation in bold print that compensation would be payable to an adjoining landowner but a claim may be made in writing within six months from the coming into force of the order in respect of which the claim is made.

- 11.9 Advice was sought from the PROW Highway Inspector as follows: “As a retired horserider and founder member / Trustee of The Trails Trust and a Member of IPROW I can confirm that I cannot envisage any conflict between walkers using this footpath on the slope well above the manege whilst there is a potential lesson or schooling session taking place. There are several situations locally, within 5 miles of this site that have public access directly beside them and there is no known conflict. Wellow Trekking Centre had a highway along one side and the entrance to the property on the short side with people coming and going at all times. The Centre is now closed but was being used for Riding for the Disabled. FP CL9/66 Off Hayeswood Road, Farmborough has a public footpath running along much it’s length on one side where expensive dressage horses are schooled. Similarly in a small field between the A37 and PF CL9/36 at Hobbs Wall, Farmborough, a competing British Dressage Grand Prix Rider and Trainer, trains both horse and rider. CL9/36 is directly beside the manege and there have been no reported problems with walkers ‘spooking’ the horses whilst being schooled. This footpath runs down the middle of the enterprise dissecting the fields from

the schooling area and horse walker.” The Authority therefore considers that the line of the Proposed FP will not adversely affect users of the adjoining land; the Authority therefore considers this test has been met.

11.10 The Authority must have regard to the contents of the Rights of Way Improvement Plan.

11.11 The proposal will contribute towards the Authority achieving the following actions which are identified in the Rights of Way Improvement Plan’s Statement of Actions (theme 4) including:

- Action 4.1 – *“Identify improvements to enable travel for all by foot/on bike to employment, health services, education, leisure & transport nodes”* (i.e. increasing safety by removing the necessity for flights of steps and removal of FP from the vicinity of farm machinery and to provide increased use of the FP network by providing an alternative to FP BA19/23 & Gassons class 4 highway with no pavement to access FP BA23/15)
- Action 4.2 - *“Identify and carry out improvements for people with mobility difficulties and visual impairments”* (i.e. improved connectivity with FP BA23/15, removal of fields boundaries, kissing gates and 4 flights of steps and removal of FP from the vicinity of farm machinery)
- Action 4.3 - *“Identify low maintenance gaps in the wider recreational network that will improve accessibility and connectivity”* (i.e. improved accessibility with a gentle slope rather than steps and gates and improved connectivity with FP BA23/15).

12. Other Options Considered

12.1 It is an option to not go forward with the proposed Diversion Order. However, this option would not deliver any improvements for the public or the Applicant. There are continuing risks to the public walking between the poultry sheds and continuing risks for farm management if the diversion does not go ahead. There are benefits to the Applicant and the public if the diversion is confirmed. The Authority considers the grounds of the objections have previously been considered but that they are not founded. The option not to refer the case to the Secretary of State for determination is therefore not recommended.

13. Risk Management

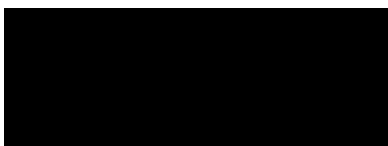
13.1 A decision risk assessment related to the issue and recommendations has been undertaken, in compliance with the Authority’s decision making risk management guidance. No high risks were identified.

14. Conclusion

- 14.1 The Order has been made to divert a section of Public Footpath BA19/22 at Skylark Farm, Peasedown St John as described in the Order and shown on the Order Map at Appendix 1.
- 14.2 It appears that the relevant statutory tests for making the Diversion Order have been met and that the proposal is in compliance with the Public Path Order Policy.
- 14.3 In order to progress the Order, as it has been opposed, the Public Path Diversion Order must be forwarded to the Secretary of State for Environment, Food & Rural Affairs for determination as to whether the Order is confirmed.

AUTHORISATION

Under the authorisation granted by the Council on 10 May 2018, the Public Path Diversion Order attached at Appendix 1 is to be forwarded to the Secretary of State for Environment, Food & Rural Affairs for determination as to whether the Order is confirmed.



Dated: 15/06/2022

Craig Jackson

Team Manager - Highways Maintenance and Drainage

Appendix 1 – Public Path Diversion Order including Order Map

Appendix 2 – Objections to the Order

Appendix 3 – the Decision Plan

Appendix 4 – Contour map

Appendix 5 – Photographs relating to the manège

PUBLIC PATH DIVERSION ORDER

HIGHWAYS ACT 1980

BATH AND NORTH EAST SOMERSET COUNCIL

**BATH AND NORTH EAST SOMERSET COUNCIL
(PUBLIC FOOTPATH B19/22, SKYLARK FARM, PEASEDOWN ST JOHN)
PUBLIC PATH DIVERSION ORDER 2022**

This order is made by Bath and North East Somerset Council ("the authority") under section 119 of the Highways Act 1980 ("the 1980 Act") because it appears to the authority that in the interests of the owners of the land crossed by the footpath described in paragraph 1 of this order it is expedient that the line of the path should be diverted.

Mr and Mrs P Parton have agreed to defray any compensation which becomes payable in consequence of the coming into force of this order and any expenses which are incurred in bringing the new site of the path into a fit condition for use by the public.

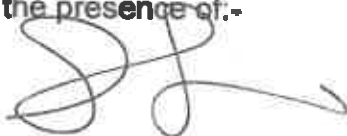
BY THIS ORDER:

1. The public right of way over the land situate at Peasedown St John and shown by a bold continuous line on the map contained in this order and described in Part 1 of the Schedule to this order shall be stopped up after fourteen days from the date of confirmation of this Order.
2. No statutory undertakers rights are affected by this order.
3. There shall at the end of fourteen days from the date of confirmation of this order be a public footpath over the land situate at Peasedown St John described in Part 2 of the Schedule and shown by a bold broken line on the map contained in this order.
4. The rights conferred on the public under this order shall be subject to the limitations and conditions set out in Part 3 of the Schedule.

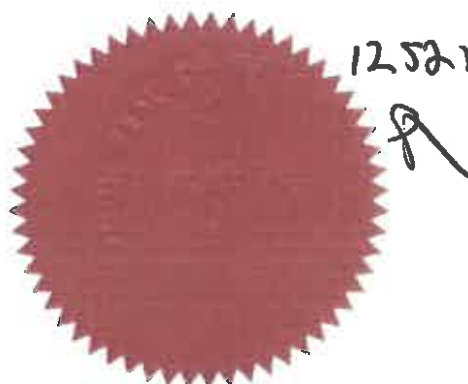
Given under the Common Seal of the Bath and North East Somerset Council on the 13th day of January 2022.

The COMMON SEAL of the
BATH AND NORTH EAST SOMERSET
COUNCIL

was hereunto affixed
in the presence of:-



Authorised signatory



In pursuance of its powers conferred by Schedule 6 to the Highways Act 1980, the authority hereby confirms the foregoing order

The COMMON SEAL of the
BATH AND NORTH EAST SOMERSET
COUNCIL

was hereunto affixed

this day of 20

in the presence of:-

SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of public footpath BA19/22 commencing from grid reference ST 7060 5575 (Point A on the Order Map) and continuing in a generally north westerly direction for approximately 333 metres to a junction with Woodborough Farm Road and Public Footpath BA19/21 at grid reference ST 7051 5606 (Point B on the Order Map)

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from grid reference ST 7060 5575 (Point A on the Order Map) and continuing in a generally north easterly direction for approximately 212 metres to a junction with Public Footpath BA19/21 at grid reference ST 7074 5590 (Point C on the Order Map)




Width: 2 metres between grid reference ST 7060 5575 (Point A on the Order Map) and grid reference ST 7074 5590 (Point C on the Order Map).

PART 3

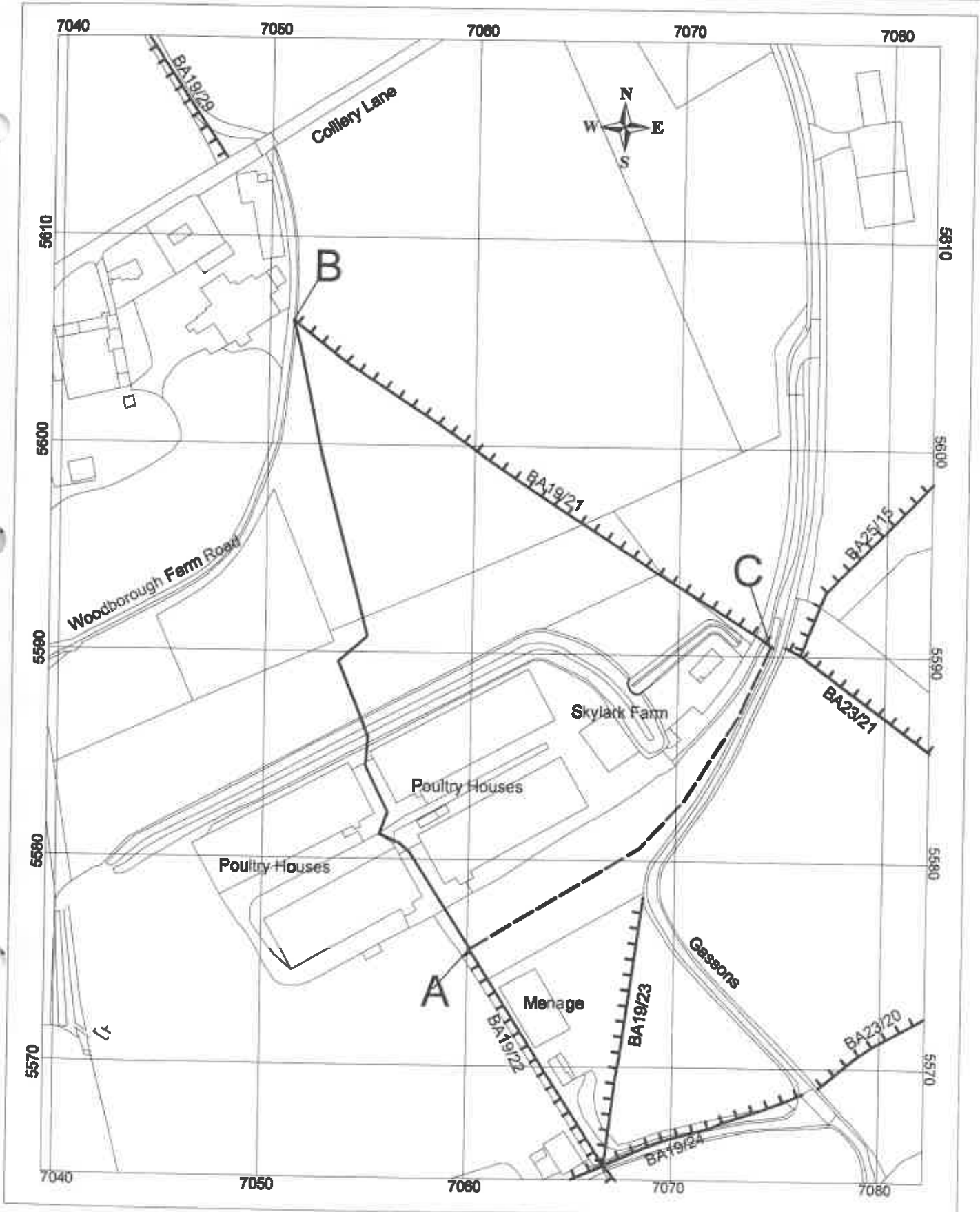
LIMITATIONS

None.

This map forms part of the Bath and North East Somerset Council (Public Footpath BA19/22, Skylark Farm, Peasdown St John) Public Path Diversion Order 2022

Public footpath to be stopped up  A B
 Unaffected public footpath 
 Public footpath to be created  A C

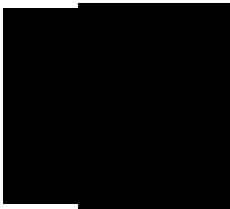
Scale: 1:2,500



Wendy Robbins

From: [REDACTED]@aahoo.co.uk>
Sent: 19 February 2022 20:55
To: PROW
Subject: Fwd: Objection letter to the diversion of footpath BA19/22 skylark farm

From: [REDACTED]@hoo.co.uk>
Date: 19 February 2022 at 8:48:12 pm GMT
To: prow@bathnes.gov.uk
Subject: **Objection letter to the diversion of footpath BA19/22 skylark farm**



I strongly object to the diversion of footpath ba19/22 on Skylark Farm, diversion order 2022

Dear sir/madam

Since our family member has purchased the land in 2020, we as a family have worked tirelessly and at great cost to create a private and safe environment for ourselves, our children/grandchildren and our horses.

We have appreciated the existing footpath and have cleared it in good faith, at our own cost.

Our main concern is that with the proposed diversion there will be a serious risk of spooking the horses within the ménage and therefore a risk to life (falls from height). Which fails the risk assessment.

Secondly the invasion of our privacy is of great concern in regards to schooling and unlimited public viewing.

There should be no discrimination between 'equestrian safety' and 'the safety of footpath users' This is causing myself huge distress in regards to the safety of my children who will use the ménage on a daily basis.

I understand safe options have been put forward for diverting the footpath but have all been rejected by the authority.

For the reasons above I strongly object to the proposed diversion of the footpath.

Yours faithfully



Sent from my iPhone

Wendy Robbins

From: [REDACTED]@hotmail.com >
Sent: 21 February 2022 21:42
To: PROW
Subject: PROPOSED PUBLIC FOOTPATH OBJECTION- emended with address, my apologies.

Dear Sir/Madam

I am emailing today regarding an objection to the proposed public footpath that has been proposed to run through Skylark Farm Peasedown.

I have several reasons to object with this one main concern which should and first and foremost be highly considered.

The opposed public footpath will highly affect a working Mènage in the equestrian industry.

The Mènage is used for many things in the equestrian world.

Now myself as a livery of Mr [REDACTED] as well as himself will suffer the consequences of a footpath not just directly but financially, The mènage will be used for schooling and training of spooky and young horses the term 'spooky horse' is exactly that, a horse or a pony that could become easily scared of the simplest of things such as a movement all of a sudden, someone coming from somewhere they haven't spotted, a dog running or barking out of sight towards them or even a bag flying passed in the wind.

The mènage will also be used to train new horses, we call this 'breaking in a horse', which is without risks in itself, so to have a string of walkers with dogs off leads suddenly appearing across the way can spook a young/old/scared horse or pony in training, or to even have people stop and watch becomes a distraction not only for the trainer but the animal too.

The mènage is also used by children aged 8 years right up to 60 years old, to help teach and give people back the confidence to ride safely again with the footpath over looking I fear will become a issue to our training which would come under 'THE HUMAN RIGHTS ACT SECTION 4 & 10'.

As a potential livery of Mr [REDACTED]

I help train and teach these animals to be safe around people in a way they understand and not just by putting them in spooky situations with the expectations that they should just except and not react, I will have a duty to keep myself, student and horse or pony safe, It is without my power to ensure the safety of other bodies or animals that are passing through or by.

One of the main reasons we chose Skylark Farm is because of how rural, peaceful, safe and quiet it's situated and I felt that I can do what I do to the best of my ability and feel I'm doing it safely for everyone, but with that being said I feel a 'public footpath' Directly overlooking a place of a mènage is just not going to work, the risk factors of 'HEALTH AND SAFETY ACT' to all the risks are too high, We we're previously on a yard that had constant walkers with dogs not on leads that would approach us and know from experience it causes chaos, which is why we moved for the safety of all to be put in the exact same position of a 'public footpath'.

I also fear that if any injury was caused to any animal or any passers by due to 'a short cut across the mènage' could be fatal or cause serious injury, which I'm hoping can be prevented by not allowing this footpath to be approved.

I look forward to hearing back.

Regards



Sent from my iPhone



APPLICATION FOR A PUBLIC PATH DIVERSION

ORDER AFFECTING PUBLIC FOOTPATH

BA19/22,

SKYLARK FARM, PEASEDOWN ST JOHN

Objection Letter

Dear Sir/Madam,

I strongly object to the diversion of footpath BA19/22 on Skylark farm, diversion order 2022.

I own the adjoining land which will be severely affected.

The proposed diversion will run across the north of my property close to and overlooking my menage. This removes all privacy and causes a danger to future horse training/lessons in the menage.

With the proposed path causing a failure of a risk assessment for the menage, due to spooks. The result of a risk assessment shows 8 out of 20 for probability and 4 out of 5 for outcome (fall from heights). There for my menage is not fit for purpose.

The authority has failed in its duty to pass its own imposed tests. It is the opinion of the officers that the failure of obtaining a risk assessment for the menage is of no consequence. This shows a failure of due diligence on their part and no consideration for my property.

In the document named 'Application at Skylark Farm public footpath' Please find below the points of the officers report where it shows failure;

Section 4 – Human Rights - The authority has prioritised the safety of footpath users over the equestrian users of the menage. This shows discrimination and a failure in Article 14 of the Human Rights Act and fails to protect my property. (Article 1 of the first protocol)

Section 5 – The Legal and Policy Background

5.4 – It will have a negative effect upon my land, the Order has not regarded the effect imposed upon land affected by any new footpath. Compensation has not been considered and material provision has been said is down to me (the effected landowner).

5.7 – The criteria of ‘safety’ has not been met, as my menage will now not pass a risk assessment, with the proposed footpath route.

The criteria ‘Equalities impact’ has failed. I am now being discriminated against, as the new path will have a negative impact upon my property.

Section 7 – Consultations

7.6 – Which states that it will alleviate safety issues for walkers as well as riders. This statement is unfounded as proved by the results of a risk assessment on the menage.

Section 8 - Officers Comments

8. 8 – Stating Effect on land. My land is seriously affected, as it has made my menage unsafe and not fit for purpose.

8.9 – ‘Effect on land affected by any proposed new path’ My land IS affected, so there is an adverse effect and compensation has not been satisfied.

8.19 – Safety is improved for the footpath user but at the expense of the safety of the neighbouring property, discriminating against the equestrian users of the property.

8.22 – Fails to acknowledge any safety issues the proposed footpath will create.

10 – Risk Management

FAILURE OF CONDUCTING A RISK ASSESSMENT. Which will negate getting public liability insurance on the menage.

11 - Conclusion

This Public Path Order Policy has not been met. Between discrimination and Safety concerns regarding the neighbouring affected land.

Regards,



Wendy Robbins

From: PROW
Sent: 24 February 2022 09:49
To: Wendy Robbins
Subject: FW: Objection to proposed diversion of footpath BA19/22 on sky lark farm

-----Original Message-----

From: [REDACTED] >
Sent: 22 February 2022 20:56
To: PROW <PROW@BATHNES.GOV.UK>
Subject: Objection to proposed diversion of footpath BA19/22 on sky lark farm



Dear Sir/Madam

I object to the proposed diversion of footpath BA19/22.

My family owns the stables to the south of sky lark farm. I have overseen the work carried out on the stables over the last two years intending to move the my horses there this summer on completion.

The stables were purchased because it already had a ménage in a private and safe location.

The proposed footpath is to run across the full width and above the ménage. This makes the ménage unfit for the purpose of schooling horses and teaching my families children to ride. I have 50 years experience handling and training horses and have carried out a risk assessment on the ménage and proposed footpath. Although it is safe for walkers it is now unsafe for riders due to spooks . The result on the ménage is "fall from hight" (single fatality)

This show's discrimination.

The authorities have not given any consideration for safety of horse and rider.

I Strongly object to the proposal

Kind Regards



Sent from my iPhone

APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH BA19/22,
SKYLARK FARM, PEASEDOWN ST JOHN

Objection Letter

Dear Sir/Madam,

I strongly object to the diversion of footpath BA19/22 on Skylark farm, diversion order 2022.

I plan to move my horse to [REDACTED] stables on the adjoining land due to its manage / training facility. This menage has been in situ for many years and the location was chosen to allow for the safety and privacy of riders. This was my primary motivation for moving my young animals to this facility as safety for myself, my daughter and my horses is of the utmost importance. As the condition of me moving the owner [REDACTED] has made significant improvements to the property at some financial cost including strengthening the bank/walls of thai training area.

During the consultation stage I voiced grave concerns over the proposed diversion via email and in a meeting with Wendy Robins of BANES council. The new path would remove all privacy from the existing menage / training area that has been in situ since 2004. Having walkers in the direct eye line of young horses being trained created a significant risk to both horse and riders. I have asked to see a risk assessment specific to the use of the menage in relation to this new diversion but none was provided. I believe that this danger should be seriously considered when looking at potential solutions to the diversion. I would not be able to continue with the lease of this facility if the proposal goes ahead as I would not be able to guarantee the safety of myself, my daughter or my animals.

I put forward several safer alternative routes that would allow walkers safe and scenic passage through the farm but all were rejected off hand. The officer in charge also failed to recognise that all of the surrounding land would be grazed, that it that one of my suggestions could not be considered as walkers would have to pass through a field of horses, I would like to reiterate that all available grazing will at some time hold horse including the land that the current footpath passed through.

The authority has failed to look at all of the options or take into account the risk assessment b [REDACTED] [REDACTED] that shows the negative impact of this diversion on the primary use of the riding facility. This shows a failure of due diligence on their part and no consideration for my safety or the safety of other horses or riders or the use of the property going forward. Should severe injury or death occur it would be due to the negligence of the authority in its responsibility to ensure the equal safety of all

parties affected. I include below This diversion will make the facility unfit for its primary use and affect its rental/ sale potential going forward.

Relevant supporting clause cited below.

Section 4 – Human Rights - The authority has prioritised the safety of footpath users over the equestrian users of the manage. This shows discrimination and a failure in Article 14 of the Human Rights Act and fails to protect my property.

Section 5 – The Legal and Policy Background

5.4 – It will have a negative effect upon my land, the Order has not regarded the effect imposed upon land affected by any new footpath. Compensation has not been considered and material provision has been said is down to me (the affected landowner).

5.7 – The criteria of ‘safety’ has not been met, as my menage will now not pass a risk assessment, with the proposed footpath route.

The criteria ‘Equalities impact’ has failed. I am now being discriminated against, as the new path will have a negative impact upon my property.

Section 7 – Consultations

7.6 – Which states that it will alleviate safety issues for walkers as well as riders. This statement is unfounded as proved by the results of a risk assessment on the menage.

Section 8 - Officers Comments

8. 8 – Stating Effect on land. My land is seriously affected, as it has made my menage unsafe.

8.9 – ‘Effect on land affected by any proposed new path’ My land IS affected, so there is an adverse effect and compensation has not been satisfied.

8.19 – Safety is improved for the footpath user but at the expense of the safety of the neighbouring property, discriminating against the equestrian users of the property.

8.22 – Fails to acknowledge any safety issues the proposed footpath will create.

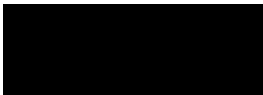
10 – Risk Management

FAILURE OF NOT CONDUCTING A RISK ASSESSMENT. Which will negate getting public liability insurance on the menage.

11 - Conclusion

This Public Path Order Policy has not been met. Between discrimination and Safety concerns regarding the neighbouring affected land.

Regards,



**Appendix 3
Decision Plan**

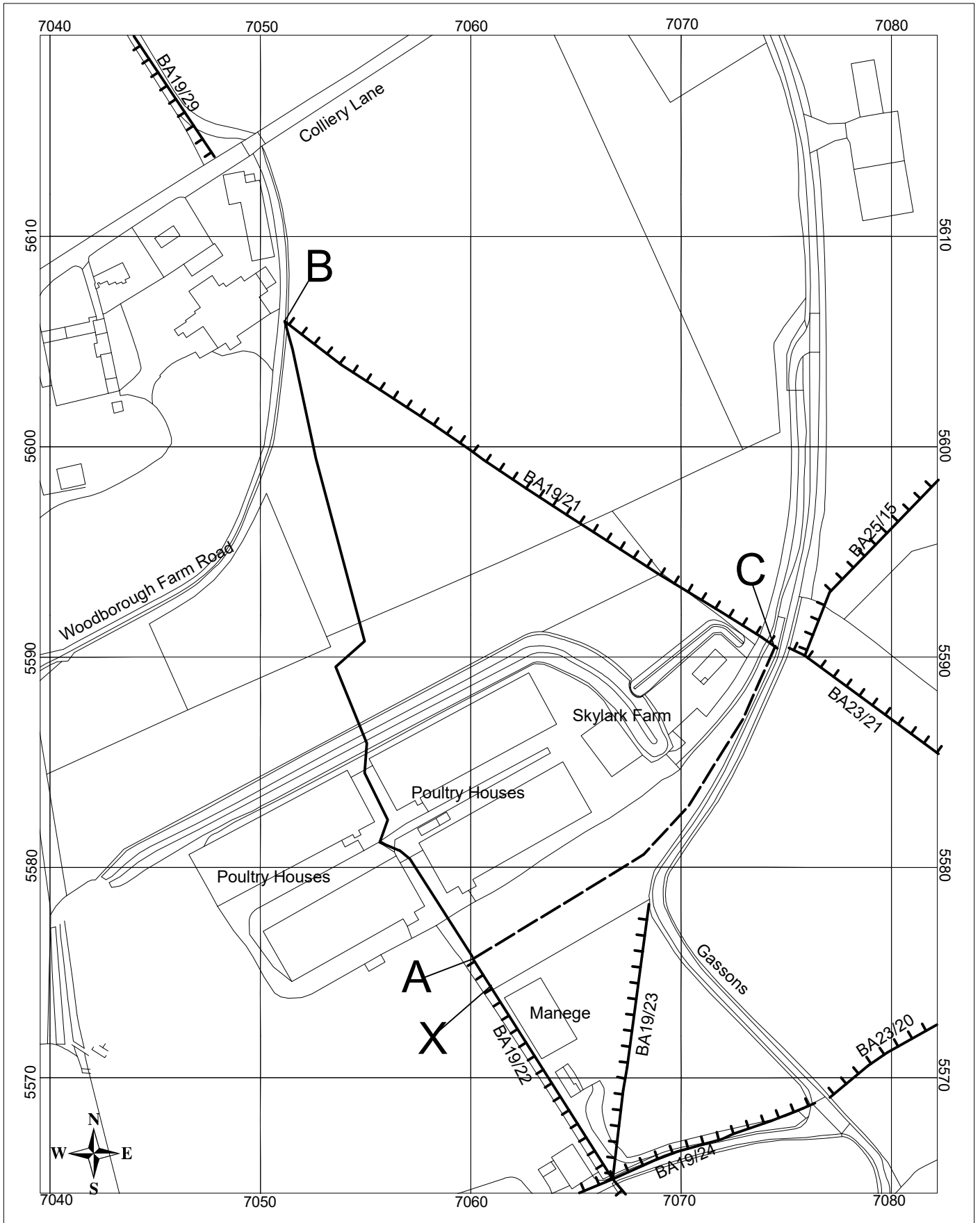
Public footpath to be stopped up **A** _____ **B**

Unaffected public footpath _____

Public footpath to be created **A** _____ **C**

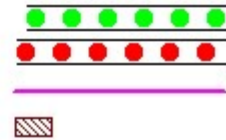
Original proposed start to diversion **X**

Scale: 1:2,500



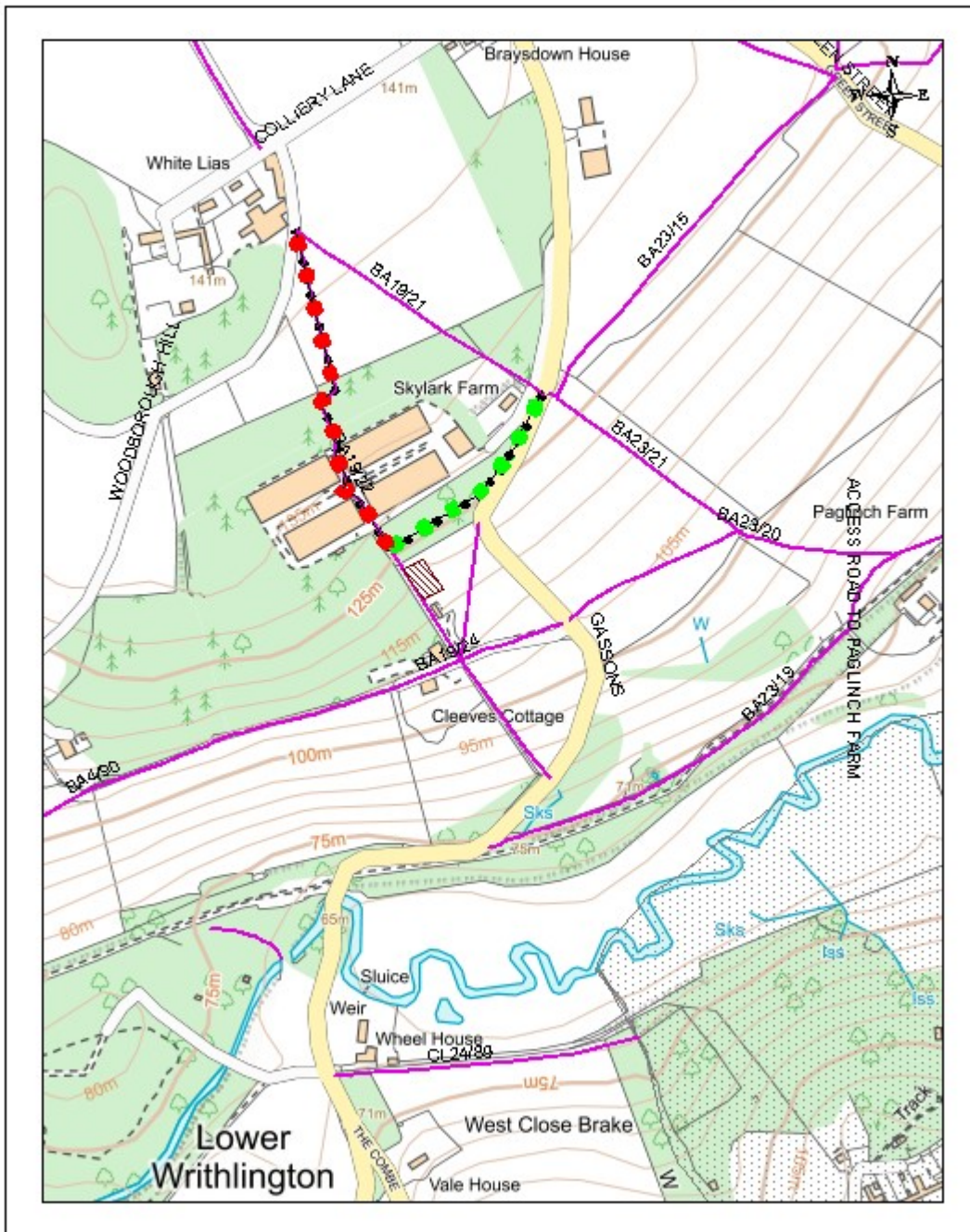
Appendix 4
Skylark Farm, Peasedown St John
& Manege with contour lines

Public Footpath to be created
 Public footpath to be Stopped Up
 Unaffected public footpath
 Manege



Scale: 1:5,000 (approx)

Manege



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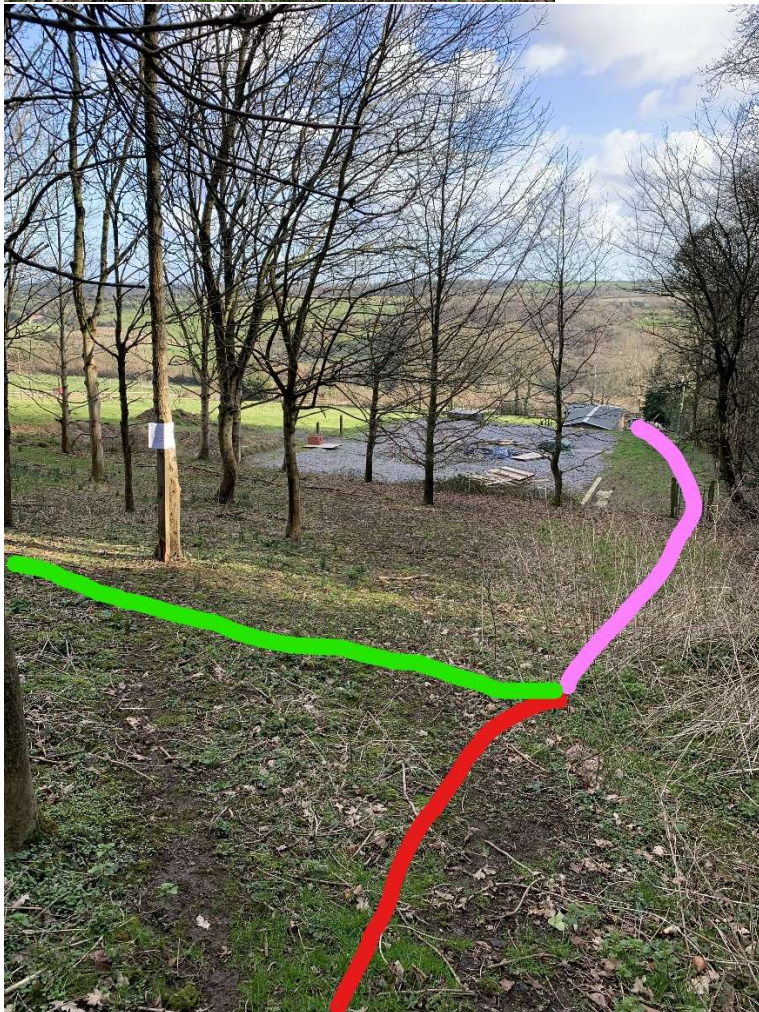
Licence number 10002224

Appendix 5 - Photographs

Proposed FP from point A (manege on right of photo)



View from Existing FP (red) looking southwards from above point A showing start of Proposed FP (green), manege and Remaining FP (pink)



Remaining (unaffected) FP rising above menage (pink Remaining FP)



View from Remaining FP BA19/22 showing manège northeastwards towards Proposed FP



View from Remaining FP BA19/22 northwards (red Existing FP, green Proposed FP, pink Remaining FP)

