

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH BC16/1 IN
NEWBRIDGE**

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath BC16/1 in Newbridge away from a dangerous road crossing, a field used by minors for camping and an area in which horses graze.

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 BC16/1 as detailed on the plan attached at Appendix 1 ("the Decision Plan") and in the schedule attached at Appendix 2 ("the Decision Schedule").

3. Financial Implications

- 3.1 The Applicant has agreed to pay the cost for processing an Order, 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. 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 BC16/1 was added to the Definitive Map and Statement by the Bath and North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No.4 – Newbridge) 2006 which took effect on 25 April 2007. The legal alignment has remained unchanged ever since.
- 6.2 The Existing Footpath runs from a junction from the busy Kelston Road, through a field used by the Bath Scouts for camping and then diagonally across a field in which horses are kept. The applicant (the principal leaseholder who currently occupies the land under a 99-year lease) wishes to divert the public to a safer crossing point of the Kelston Road; away from the camping field for safeguarding reasons; and along a fenced line in the horse field in order to keep horses and walkers separate, for safety reasons.
- 6.3 The Authority has been advised by the applicant that in September 2019, an incident occurred when a walker's dog chased one of the horses in the latter field. The horse in question bolted and ran into the barbed wire fence surrounding the enclosure. Tragically the injuries suffered by the horse were so serious that it had to be euthanised.
- 6.4 **Description of the Existing Footpath**
The proposal is to divert the full width of the section of Public Footpath BC16/1 commencing from grid reference ST 7151 6628 (point A on the Decision Plan) proceeding in a generally easterly direction for approximately 181 metres to grid reference ST 7169 6629 (point B on the Decision Plan), and then turning in a generally east south-easterly direction for approximately 217 metres to grid reference ST 7190 6625 (point C on the Decision Plan). This route is referred to as the "Existing Footpath".
- 6.5 **Description of the Proposed Footpath**
The proposed new route commences from grid reference ST 7153 6624 (point E on the Decision Plan) and proceeds in a generally north-easterly direction for approximately 168 metres to grid reference ST 7162 6633 (point D on the Decision Plan), and then turns in a generally south-easterly direction for approximately 126 metres to grid reference ST 7173 6628 (point G on the Decision Plan) and then continues in a generally east south-easterly direction for approximately 157 metres to grid reference ST 7188 6621 (point H on the Decision Plan) and then turns in a generally

north-easterly direction for approximately 42 metres to grid reference ST 7190 6625 (point C on the Decision Plan). The width would be two metres between points A & G, and three metres between points G & C. This route is referred to as the "Proposed Footpath".

6.6 Limitations and Conditions

No limitations or conditions are proposed. The Proposed Footpath crosses a new field boundary (point E on the Decision Plan) and the authorisation of a pedestrian gate is proposed at this boundary under section 66(3) of the Act (and set back from the road within a two-metre by two-metre fenced area), to safeguard walkers from the adjacent, busy, Kelston Road. The applicant will be also installing a bridge crossing the stream at point F on the Decision Plan. The wooden stile currently situated at point G will be replaced with a metal kissing gate which will be authorised for stock control under section 147 of the Act.

7. Consultation

- 7.1 Affected landowners, Kelston Parish Council, national and local user groups, the Ward Councillors and statutory consultees were all consulted about the proposed diversion for a period of four weeks ("the Consultation Period"). Additionally site notices were erected at both ends of the proposed diversion to seek the views of members of the public.
- 7.2 In response to the consultation, a number of statutory undertakers stated that their plant would not be affected and/or that they had no objections to the proposals.
- 7.3 Similarly, the local Ramblers representative stated that they had no objections. Another member of the Bath Ramblers made several observations: firstly that point F might be difficult to find when approaching from point D; he also hoped that the stile at point G would be replaced with a kissing gate. He was in favour of the diverting the western end of the footpath from point A to point E to provide a safer crossing of the Kelston Road and recommended that the new kissing gate at point E should be set back slightly into the field, with the boundary fencing adjusted appropriately to provide a safe refuge for people to stand whilst waiting to cross the road.
- 7.4 Two e-mails were received from members of the public objecting to the proposals (one e-mail from Objector 1, and one e-mail from Objectors 2 & 3). These objections can be summarised as follows:
- Footbridge at point F likely to include steps causing mobility issues and likely to fall into disrepair making footpath impassable;
 - No reason for the F to G section of the footpath to be diverted as it is not adjacent to the camping field;
 - The proposed diversion between points G & C will introduce a steeper incline up the eastern side of the field to point C, in comparison to the current cross-field route;

- This section is also likely to become muddy and very slippery;
- The proposed new fenced footpath between points G & C would deny families the opportunity to interact with nature.

7.5 Objector 1 also made the following comments:

- More details should be given as to how a safe area will be created at Point E;
- Not clear why walkers need to be kept away from campers;
- Walkers had used a similar route west of point B in the past but the landowner had recently blocked that route;
- The proposed diversion between points F & G runs adjacent to the camping field anyway so why re-route it?
- The proposed diversion between points F & H takes walkers closer to the field in which the horses are stabled and therefore closer to the area in which they are most often seen;
- There was no link to the application on the Authority's website.

7.6 Objectors 2 & 3, whilst critical of the proposed new fenced footpath between points G & C (see paragraph 7.4 above), expressed support for the proposed safer crossing point at point E and also for the D to F section of the diversion.

7.7 Two e-mails were received from further members of the public querying or commenting upon the proposals. The first queried the need for fencing the footpath through the horse field between points G & C and asked whether the adjoining field to the north could be used instead? The second agreed with the proposed diversion and commended the safer road crossing at point E; however they objected to the use of the land for camping, and to the playing of sound equipment in the area.

7.8 No other comments were received in relation to the proposals during the Consultation Period.

7.9 The above objections and comments are now considered in turn:

7.10 **"Point F might be difficult to find when approaching from Point D":** This can be addressed with suitably-placed waymarker posts.

7.11 **Replacement of stile at Point G with a kissing gate:** This is planned (see paragraph 6.6 above).

7.12 **Diverting the western end of the footpath from Point A to Point E to provide a safer crossing of the Kelston Road and recommending that the new kissing gate at point E should be set back slightly into the field, with the boundary fencing adjusted appropriately to provide a**

safe refuge for people to stand whilst waiting to cross the road: Again, this is planned (see paragraph 6.6 above).

- 7.13 **"Footbridge at point F likely to include steps causing mobility issues and likely to fall into disrepair making footpath impassable":** The bridge will not have steps (see paragraph 8.12 below). The occupier will have a continuing duty to maintain the bridge in such a state as to be safe and suitable for walkers. The Authority has a similar ongoing duty.
- 7.14 **"No reason for the F to G section of the footpath to be diverted as it is not adjacent to the camping field":** Walkers cannot get around the camping field without going into this field.
- 7.15 **"The proposed diversion between points G & C will introduce a steeper incline up the eastern side of the field to Point C, in comparison to the current cross-field route":** This is discussed in detail at paragraph 8.4 below.
- 7.16 **"Section G to C is also likely to become muddy and very slippery":** Stone can be placed on any areas that become poached, to keep the footpath surface in a reasonably walkable state. The corner at Point H is considered most likely to become poached and the applicant has agreed to lay stone in this area before the Proposed Footpath is opened (see paragraph 8.7 below).
- 7.17 **"The proposed new fenced footpath between points G & C would deny families the opportunity to interact with nature":** The occupier has the right to fence either or both sides of the public footpath (this would apply equally to the existing legal line).
- 7.18 **"More details should be given as to how a safe area will be created at Point E":** A two-metre by two-metre area at Point E will be cleared of ground cover and recessed from the road edge with fencing, to act as a refuge for walkers. This recessed area will be smooth-paved with geotextile and reinforced consolidated hardcore stone approximately 150 millimetres thick. A pedestrian gate will be installed within the fenced recess to allow walkers access to the Proposed Footpath.
- 7.19 **"Not clear why walkers need to be kept away from campers":** This is for safeguarding reasons as the campers are minors (see paragraph 8.2 below).
- 7.20 **"Walkers had used a similar route west of point B in the past but the landowner had recently blocked that route":** It is possible that the occupiers' changing attitude reflects their changing views on the management of the land.
- 7.21 **"The proposed diversion between points F & G runs adjacent to the camping field anyway so why re-route it?":** The first statutory test is whether the proposed diversion is in the landowner's interests; it is considered that this test is met in this instance (see paragraph 8.2 below).
- 7.22 **"The proposed diversion between points G & H takes walkers closer to the field in which the horses are stabled and therefore closer to**

the area in which they are most often seen”: The objector is perhaps not aware that fencing will be part of the proposals; the proximity of walkers to the horses will not be an issue if this fencing negates any interaction, as is intended (see paragraph 6.2 above).

- 7.23 **“There was no link to the application on the Authority’s website”:** Unfortunately, the application was not available on the Authority’s website at the time of the first consultation, due to technical issues. However, it is now available.
- 7.24 **Querying the need to fence the footpath through the horse field:** The applicant’s reasons have been set out in paragraphs 6.2 and 6.3 above.
- 7.25 **Querying why the adjoining field to the north of the horse field cannot take the Proposed Footpath instead:** The applicant neither owns nor occupies this adjoining field. The diversion they are seeking remains within the boundaries of land over which they have control.
- 7.26 **Objection to the use of the land for camping, and to the playing of sound equipment in the area:** Whilst these comments are noted, they are not relevant to the statutory or policy considerations relating to the diversion of footpaths.

8. Legal Tests

- 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 runs through a field which the occupiers, the Bath Scouts, use for camping. Further east (between points G & C) the path then runs through a field in which the Scouts’ sub-tenant uses to graze horses.

The Proposed Footpath will divert walkers around the camping field and therefore away from the minors which use it; this is therefore in the occupier’s interests for safeguarding reasons.

Further east, the fenced footpath described in paragraph 6.2 above will keep walkers (and where applicable their dogs) separate from the horses; this is therefore in the lessee’s interests from the point of view of the horses’ welfare (particularly in view of the recent incident outlined in paragraph 6.3 above).

The diversion of the footpath would therefore be expedient in the interests of the occupiers of the land, 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 Proposed Footpath starts approximately 50 metres further down the Kelston Road than the

Existing Footpath (the termination point at the footpath's other end remains unchanged). The new starting point lies directly opposite the northern entrance to public footpath BC16/2. Consequently the starting point of the Proposed Footpath is actually considered more convenient to the public than the starting point of the Existing Footpath, and this test should therefore be considered to have been met.

- 8.4 The path must not be substantially less convenient to the public as a consequence of the diversion:** Matters such as length, difficulty of walking and the purpose of the path pertain to the convenience to the public. The overall length of the diverted route will be 95 metres longer than the length of the existing route. However it is likely that that is path will only form part of a much longer route for walkers so this 95-metre increase is unlikely to be significant in the context of whole walks which people will undertake. Neither is it considered that the difficulty of the walking will change substantially: walkers will pass through/over one less gate/stile than they do currently (with the elimination of the field boundary crossing at point B); the new road crossing at point E will be safer and easier than the current one at point A; and the incline of the horse field along the 42-metre long section between points H & C, although steeper than the incline of the present 169-metre long cross-field section between points G & C, with the proposed 157-metre long G to H section being a level stretch and the H to C slope certainly not being so steep as to make the construction of steps a consideration, this is not considered a substantial overall increase in steepness. It therefore follows that the Proposed Footpath is not considered substantially less convenient to the public. This test should therefore be considered to have been met.
- 8.5 Consideration must be given to the effect the diversion will have on public enjoyment of the path as a whole, on other land served by the existing path and on land affected by any proposed new path, taking into account the provision for compensation:**
- 8.6 Public enjoyment of the Path as a whole:** The Proposed Footpath will run through a small area of woodland and cross a small stream (at point F) The equivalent section of the Existing Footpath which simply traverses fields so this section of the proposed diversion could be viewed as creating a more varied route compared with the current one. The effect on public enjoyment of the Proposed Footpath as a whole is therefore arguably, one of improvement. This test should therefore be considered to have been met.
- 8.7 Effect on other land served by the existing footpath and land affected by the proposed footpath:** The land occupied by the applicant will benefit from the removal of the Existing Footpath from its camping field and the Proposed Footpath will instead enter a wooded area, crossing a small stream (point F) before following the boundary of the two fields to the north. The applicant has agreed to clear a two-metre-wide path through the wooded area where the stream is situated, and to put in a 3.6-metre-wide bridge at the stream crossing.

At its eastern end, the Proposed Footpath will run along the southern and eastern field boundaries in contrast to the Existing Footpath which runs

across the middle of the field. Immediately south of this field is a yard in which horses are stabled, the gated entrance to which lies in the field's south-eastern corner (point H). In the absence of any groundworks in this corner, it is likely that a combination of walkers' footfall and the passage of horses passing between the yard and the grazing field, would result in the footpath surface becoming badly poached and difficult/unpleasant to traverse. The applicant however has agreed to lay a 4m x 4m area of porous DOE Type 2 in this corner, reinforced with geotextile, to prevent the ground from deteriorating in this way.

With the aforementioned clearance, bridge and surface works carried out to the Authority's satisfaction, it is not considered that the proposed diversion will have an adverse effect either on land served by the Existing Footpath, or on land affected by the Proposed Footpath; this test should therefore be considered to have been met.

- 8.8 Effect on land affected by any proposed new path, taking into account the provision for compensation:** There is no adverse effect on land affected by the Proposed Footpath with regard to compensation as the Existing Footpath already crosses the same land, all of which is occupied by the Applicant in any event.
- 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:** In separating the public from the horses that graze in the eastern field, the Proposed Footpath would have a positive effect on farming, and on members of the public with visual disabilities.

In terms of biodiversity, the diversion will include a limited amount of vegetation clearance in the vicinity of point F (see paragraph 8.7 above); however, as the area in question has no specific diversity designation it is considered that the effect of this clearance on biodiversity will be negligible.

The diversion will have a negative effect on forestry in so far as a clump of hazel trees will be cleared at point F to allow the bridge to be sited in that location. However, the Applicant advises that over the course of the past year they have planted 75 new trees within the site as a whole and are set to plant 550 further trees before the coming Spring – a project they consider will more than redress the ecological balance affected by the removal of the hazel trees.

- 8.10 The effect of the diversion on the additional criteria identified in the Authority's Public Path Order Policy; namely, Connectivity, Equalities Impact, Gaps and Gates, Gradients, Maintenance, Safety, Status, Width and Features of Interest:**
- 8.11** The Proposed Footpath starts approximately 50 metres further along Kelston Road as the Existing Footpath but directly opposite the northern entrance to public footpath BC16/2 (see paragraph 8.3 above). This will therefore improve the connectivity of the public rights of way network.

- 8.12 As the Proposed Footpath will separate walkers from horses it will have a positive impact on people with visual impairments. In both removing one kissing gate from the network (point B) and replacing a stile with a gate (point G) it will also have a positive impact on people with mobility impairments. The proposed diversion will have a neutral effect on those with other impairments.
- During the Consultation Period, Objector 1 raised concerns about the footbridge proposed at point F being likely to contain steps and therefore likely to cause difficulties for people with mobility issues. However, the bridge in question will be suitable for a tractor to pass over and therefore will not have steps.
- 8.13 As the Proposed Footpath would contain one less gate and one less stile than the Existing Footpath (see paragraph 8.4 above), it is in keeping with the principles of 'Least Restrictive Access'.
- 8.14 There is an increase in gradient along the 42-metre section between points H & C on the Proposed Footpath compared with the 169-metre cross-field section between points G & C on the Existing Footpath. However, the Proposed Footpath also has a 157-long flat section immediately preceding the 42-metre steeper section (see paragraph 8.4 above) which it is considered mitigates this.
- 8.15 Maintenance of the Proposed Footpath will be similar to maintenance of the Existing Footpath. The vehicular footbridge on the Proposed Footpath will be the maintenance responsibility of the occupiers primarily (to be established by way of a Maintenance Deed), but with the Authority retaining a statutory duty to provide and maintain a bridge in that location.
- 8.16 Similarly, the Proposed Footpath will improve walkers' safety, as the fenced line G-H-C will keep them separate from the horses that graze in the field in question.
- 8.17 The Proposed Footpath will have a neutral impact on Status.
- 8.18 As regards width, the Existing Footpath is two metres wide along its entire length; the Proposed Footpath will be two metres wide between points E & G and then three metres wide between points G & C.
- 8.19 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. It is considered that the stream crossing at point F and the wooded area in the same vicinity will be added features of interest.
- 8.20 It is considered that on balance the proposed diversion is in accordance with the Policy.

9. Risk Management

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

10. Conclusion

- 10.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposal is in line with the Public Path Order Policy.
 - 10.2 The Diversion Order would be in the interests of the occupier 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 10 May 2018, the Place Law Manager is hereby requested to seal an Order to divert a section of Public Footpath BC16/1 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



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Dated: 10/02/2022

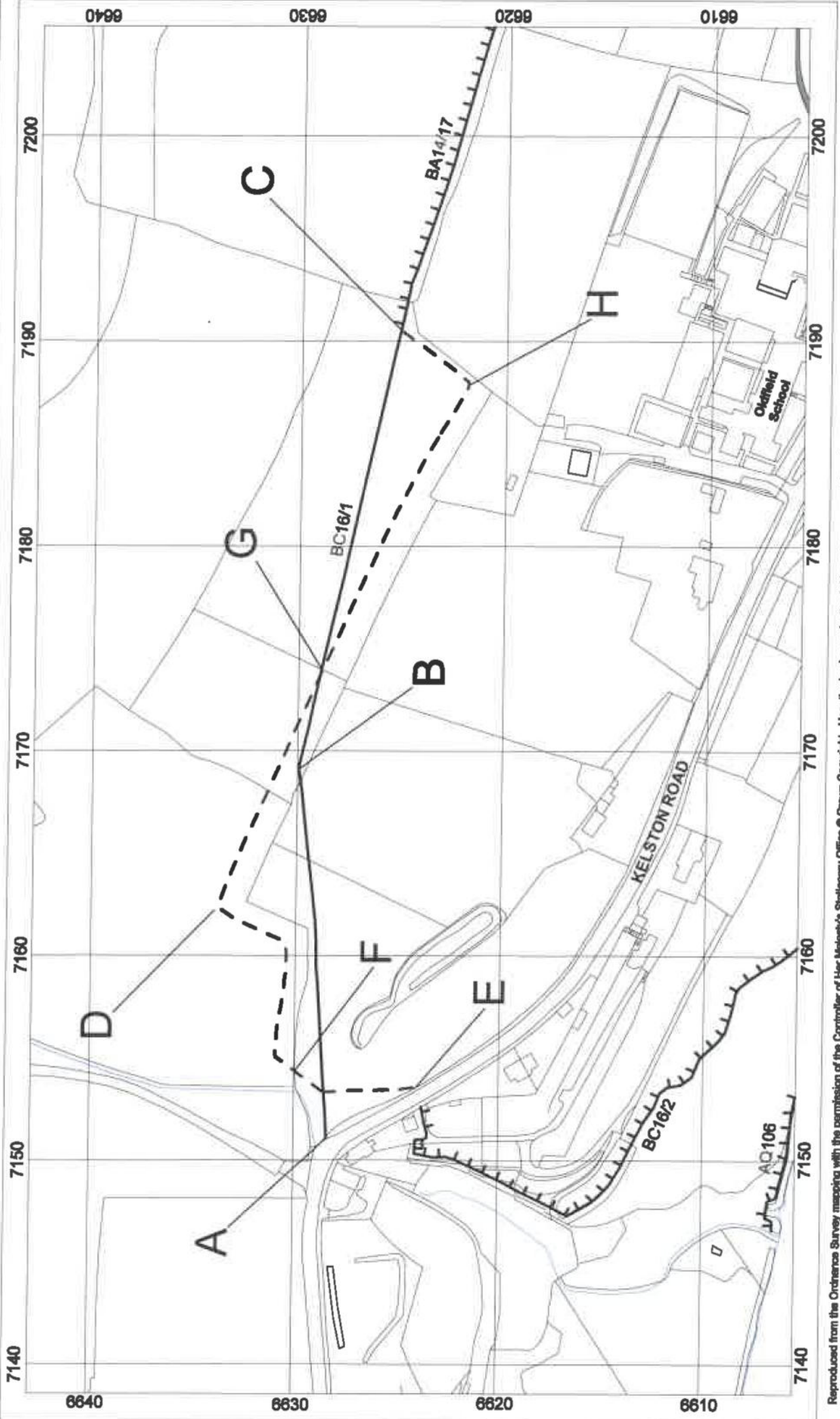
Craig Jackson – Team Manager, Highways Maintenance and Drainage

**Appendix 1 - Decision Plan
Public Footpath BC16/1,
Newbridge/Kelston**

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



Scale 1:2500



APPENDIX 2 - DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of Public Footpath BC16/1 commencing from grid reference ST 7151 6628 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 181 metres to grid reference ST 7169 6629 (point B on the Decision Plan) and then turning in a generally east south-easterly direction for approximately 217 metres to grid reference ST 7190 6625 (point C on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from grid reference ST 7153 6624 (point E on the Decision Plan) and proceeding in a generally north-easterly direction for approximately 168 metres to grid reference ST 7162 6633 (point D on the Decision Plan) and then turning in a generally east south-easterly direction for approximately 126 metres to grid reference ST 7173 6628 (point G on the Decision Plan) and then continuing in a generally east south-easterly direction for approximately 157 metres to grid reference ST 7188 6621 (point H on the Decision Plan) and turning in a generally north-easterly direction for approximately 42 metres to grid reference ST 7190 6625 (point C on the Decision Plan).

Width: 2 metres between grid references ST 7153 6624 (point E on the Decision Plan) and ST 7173 6628 (point G on the Decision Plan).

3 metres between grid references ST 7173 6628 (point G on the Decision Plan) and ST 7190 6625 (point C on the Decision Plan).

PART 3

LIMITATIONS AND CONDITIONS

None.