

**PROPOSAL FOR A PUBLIC PATH CREATION
ORDER CONNECTING GIFFORDS LANE AND ST
CLEMENTS ROAD IN KEYNSHAM**

1. The Issue

- 1.1 The s106 Agreement for the K2 Housing Development (09/04351/FUL) included a proposal, and funding, to create a public footpath between Giffords Lane and St Clements Road in Keynsham.

2. Recommendation

- 2.1 That the Team Manager - Highways Maintenance and Drainage grants authorisation for a Public Path Creation Order to be made to create a new public footpath between Giffords Lane and St Clements Road in Keynsham 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 As part of a Section 106 Agreement dated 24th June 2011, the owners of the K2 development site agreed to pay the Authority £25,000 towards the '*upgrading of the public footpath at Park Road/St Clements Road*'. This contribution will cover the legal costs associated with creating the public footpath rights, the cost of resurfacing the route and any compensation which becomes payable as a result of the new public rights being created. Should an Order be made and confirmed, the new footpath would become maintainable at public expense.

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 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).

5.2 Before making a creation order under section 26 of the Highways Act 1980 (“the Act”) the Authority must be satisfied that there is a *need* for a right of way in the area. In reaching its decision, the Authority must have regard to:

- the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area,
- the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions to compensation,
- the needs of agriculture and forestry and the keeping and breeding of horses,
- the effect which the creation of the path would have on members of the public with protected characteristics under the Equality Act,
- and the desirability of conserving flora, fauna and geological and physiological features.

5.5 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.

5.6 The criteria are:

- Connectivity,
- Equalities Impact,
- Gaps and Gates,
- Gradients,
- Maintenance.
- Safety,
- Status,
- Width,
- Features of Interest,

6. Background and Application

6.1 It is proposed that a public footpath is created commencing from a junction with Giffords Lane at grid reference ST 6528 6753 (point A on the Decision Plan) and proceeding in a generally east north-easterly direction for approximately 52 metres to a junction with St Clements Road at grid reference ST 6533 6754 (point B on the Decision Plan). The footpath would be 2 metres wide and would be created without any limitations. The route is here after referred to as the ‘Proposed Footpath’.

6.2 The Proposed Footpath physically exists on the ground and is in use on foot by the public but the Authority does not have any evidence that it has acquired public rights.

7. Consultations

- 7.1 Adjacent landowners, Keynsham Town Council, national and local user groups, the Ward Councillors and statutory undertakers were all consulted about the proposed diversion for a period of six weeks ("the Consultation Period"). Additionally site notices were erected at either end of the Proposed Footpath and on the Authority's website to seek the views of members of the public.
- 7.2 Cllr O'Brien responded to state that creating the Proposed Footpath as a public right of way would be '*an excellent idea as on many occasions the borders at the side substantially encroach onto the path*'. Cllr Hale stated that '*I am also happy to support the ROW at St Clements Road/Stoney Lane*'. The Ramblers' local representative responded that state that he regarded the proposals to be '*in order*'.
- 7.3 In response to the consultation, a number of statutory undertakers stated that their plant would not be affected. No other comments were received in relation to these proposals during the Consultation Period and copies of the consultations and responses are available upon request.

8. Officer Comments

- 8.1 It is recommended that the various tests outlined in section 5 above are considered in turn.
- 8.2 **Need for the footpath:** the Proposed Footpath will positively impact upon the convenience of persons resident in the area, particularly those residents living in St Clements Road and any of the six connecting roads. The Proposed Footpath will provide these residents with a shorter, more direct route to Abbots Wood Community Woodland and the popular Two Rivers Way and Community Forest Path promoted routes which run adjacent to the River Chew. The Proposed Footpath is already well used by members of the public which suggests that it is a convenient and enjoyable route to use.
- 8.3 The Authority has not been able to identify the owner of the land over which the Proposed Footpath runs. This is a thin strip of land bordered on either side by hedges and the landowner appears to have little or no opportunity or desire to use the land. It should be noted that, under section 28 of the 1980 Act, the landowner can claim compensation for the depreciation in the value of their land suffered by being disturbed in their enjoyment. Having regard to the convenience of persons resident in the area and the effect on the rights of persons interested in the land, it is considered that there is a need for the Proposed Footpath and that this test has been met.
- 8.4 **Agriculture, forestry and horses:** the land over which the Proposed Footpath runs is not used for agriculture, forestry or the keeping or breeding of horses and the proposal will not have any effect in these respects.

- 8.5 **Equalities:** the Proposed Footpath will provide a firm, level route which will be accessible to users who are mobility impaired. Additionally, the Proposed Footpath is bound on either side by hedges which will make it easy to follow for users with limited sight. The proposals therefore take account of members of the public with Protected Characteristics.
- 8.6 **Flora, fauna and geological and physiological features:** the land in the area is now known to have any vulnerable flora, fauna, geological or physiological features. The proposals therefore will not have an impact on these type of features.
- 8.7 **The effect of the diversion on the additional criteria identified in the Authority's Public Path Order Policy;** the Proposed Footpath will improve the connectivity of the PROW network and, as detailed above, the proposals take account of members of the public with Protected Characteristics. The Proposed Footpath will be two metres wide and be created without any limitations. The creation of the Proposed Footpath would increase the Authority's maintenance responsibility; however, the s106 agreement will fund the resurfacing of the path which will result in the needs for only minimal maintenance over the next 10 years.
- 8.8 The public benefit associated with increased connectivity is deemed to outweigh the additional maintenance responsibility and it is considered that on balance the proposals are in accordance with the Policy.

9. Risk Management

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

10. Conclusion

- 10.1 It appears that the relevant statutory tests for making such a creation order have been met and that the proposals do not contravene the Public Path Order Policy.
- 10.2 The Creation Order would satisfy a public need.
- 10.3 The Order should be made as proposed.
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AUTHORISATION

Under the authorisation granted by the Authority on 12 May 2016, the Place Law Manager is hereby requested to seal an Order to create:

- a public footpath commencing from a junction with Giffords Lane at grid reference ST 6528 6753 (point A on the Decision Plan) and proceeding in a generally east north-easterly direction for approximately 52 metres to a junction with St Clements Road at grid reference ST 6533 6754 (point B on the Decision Plan).
- the footpath is to be 2 metres wide and is to be created without any limitations.



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Dated: 23/11/17.....

Craig Jackson

Team Manager - Highways Maintenance and Drainage

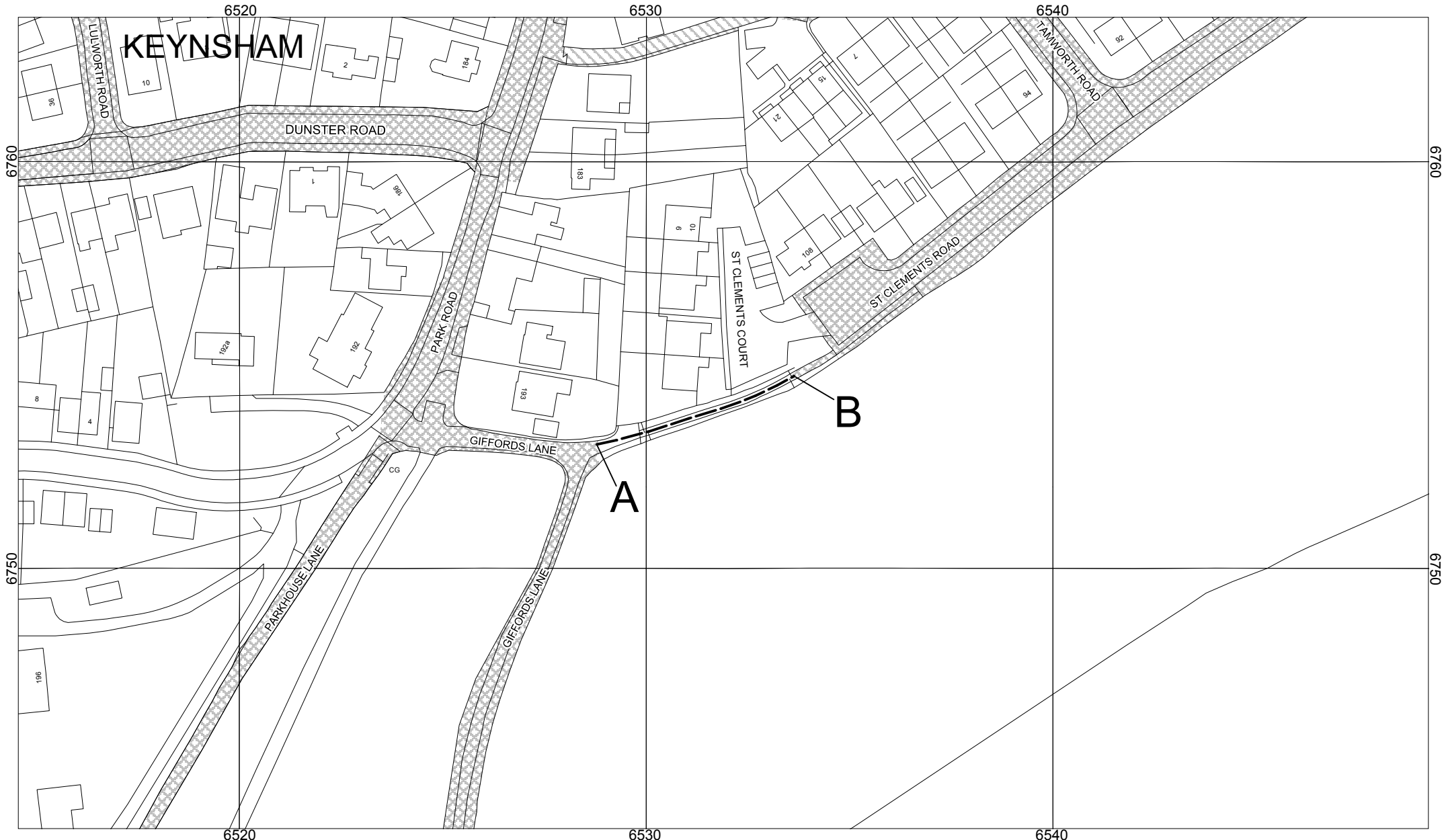
Appendix 1: Decision Plan

Giffords Lane to St Clements Road

Public footpath to be created



Scale 1:1250



APPENDIX 2
DECISION SCHEDULE

SCHEDULE

PART 1

DESCRIPTION OF LAND

A public footpath commencing from a junction with Giffords Lane at grid reference ST 6528 6753 (point A on the Order Map) and proceeding in a generally east north-easterly direction for approximately 52 metres to a junction with St Clements Road at grid reference ST 6533 6754 (point B on the Order Map).

Width: 2 metres.

PART 2

LIMITATIONS AND CONDITIONS

None.