

SECTION 257 TOWN & COUNTRY PLANNING ACT 1990

APPLICATION FOR A PUBLIC PATH DIVERSION ORDER AFFECTING PUBLIC FOOTPATH CL24/107 IN WESTFIELD

(Ward: Westfield)

1. The Issue

- 1.1 An application has been made to divert a section of public footpath CL24/107 near Cobblers Way in Westfield. These changes are proposed to enable development to be carried out in accordance with planning permission 16/04714/RES (Residential Housing) and would be achieved by way of a diversion order made under section 257 of the Town and Country Planning Act 1990.

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 CL24/107 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 and the cost of any required notices in a local newspaper. The Applicant has also agreed to meet the costs of bringing the proposed new route into a suitable condition for public use. 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 Regulatory (Access) 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. 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 257 of the Town and Country Planning Act 1990 (“the Act”) the Authority must be satisfied that it is necessary for the public right of way to be diverted in order to enable development to be carried out in accordance with planning permission granted under Part III or section 293A of the Act.
- 5.3 The Authority must also give due regard to the effect the diversion will have on biodiversity and members of the public with protected characteristics as defined by the Equality Act 2010.
- 5.4 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.
- 5.5 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 CL24/107 is recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956. The legal alignment has remained unchanged ever since. The original footpath went to an old lime kiln and over an old quarry area which have not been in existence for many years. The area is currently an area of waste land which has naturally grassed over. The legal line of this section of the public footpath has not been followed for many years as walkers tend to walk directly from point A to point D to cross the land, which is closer to the proposed route.
- 6.2 The proposal is to divert a section of public footpath CL24/107 commencing from Point A on the Decision Plan via Points B, C and D to Point E to a new line commencing from Point A via Points F and G to Point E.
- 6.3 Development is planned in accordance with planning permission 16/04714/RES (approval of reserved matters with regard to outline application 14/04003/OUT for 81 dwellings). The footpath needs to be formally diverted to allow for the development to take place. The diversion would be achieved by way of a diversion order made under section 257 of the Town and Country Planning Act 1990.

Description of the Route to be Diverted

- 6.4 The full width of a section of Public Footpath CL24/107 commencing from a field boundary at grid reference ST 6768 5377 (Point A) and continuing in a generally north westerly direction for approximately 68 metres to grid reference ST 6763 5381 (Point B) and turning in a generally north easterly direction for approximately 81 metres to grid reference ST 6769 5386 (Point C) and turning in a generally north westerly direction for approximately 66 metres to a field boundary at grid reference ST 6766 5390 (Point D) and continuing in a generally north westerly direction for approximately 7 metres to grid reference ST 6765 5391 (Point E). This route is hereafter referred to as “the Existing Footpath”.

Description of the Proposed Footpath

- 6.5 A section of public footpath commencing from a field boundary at grid reference ST 6768 5377 (Point A) and continuing in a generally northerly direction for approximately 36 metres to grid reference ST 6767 5380 (Point F) and turning in a generally easterly direction for approximately 15 metres to grid reference ST 6768 5381 (Point G) and turning in a generally northerly direction for approximately 114 metres to grid reference ST 6765 5391 (Point E). This route would be 2 metres wide throughout and is hereafter referred to as “the Proposed Footpath”.

7. Consultations

- 7.1 Affected landowners, Westfield Parish 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 section of footpath to be diverted and on the Authority’s website 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.
- 7.3 Westfield Parish Council ‘noted’ the proposal ‘*without comment*’.
- 7.4 The Local Representative for The Ramblers responded with ‘*the proposed changes would seem welcome in view of the poor state of the present path*’.
- 7.5 No other comments were received in relation to these proposals during the Consultation Period and copies of the consultations and responses are available if required.

8. Officer Comments

- 8.1 **The legislative test under consideration is whether it is necessary to divert the public right of way to enable development to be carried out.**
- 8.2 The Existing Footpath runs over land which has planning permission to develop and build upon. If the footpath is not diverted, the public right of way will go through new dwelling houses. It is proposed that the footpath is diverted between the dwelling houses along estate roads and along a tarmac path in order for the development to take place.
- 8.3 **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.**
- 8.4 The diversion will be over estate and tarmac paths whereas the Existing Footpath is over undeveloped waste land. The development as a whole may affect the biodiversity of the development land but this has been considered when granting planning permission and mitigating measures are to be taken under the planning process. The current surface of the Existing Footpath is uneven and is not followed by Users as it is not a direct route across the waste land. The Proposed Footpath will have a tarmac surface and will be a more direct route making it easier to traverse. This is likely to have a positive impact on those with mobility and visual impairments.
- 8.5 **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.

- 8.6 Paragraph 4.1 of the Authority's Public Path Order Policy states that applications will normally be rejected that seek to divert existing paths alongside new estate roads, as it is contrary to government guidance in DEFRA Circular 1/09. Paragraph 7.8 of Circular 1/09 states: "*In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.*" The Proposed Footpath will use estate roads in part but these are not through-roads and there should therefore be access-only traffic travelling at slow speed. The Proposed Footpath is a more direct route from point A to point E and the public do not currently follow the legal line as it is circuitous to reach the same points. The Proposed Footpath will therefore improve connectivity. The current surface of the Existing Footpath is over waste ground with an uneven surface. The Proposed Footpath is over a tarmac surface and will be easier to traverse which could have a positive impact on those with mobility and visual impairments. The Proposed Footpath will be created without any limitations and a kissing gate which is currently in situ will be removed, thus improving accessibility. The Proposed Footpath will be adopted and maintained by the Council's Highways Department. The Proposed Footpath does not have any impact on the remaining criteria identified in the Public Path Order Policy. 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 footpaths.

10. Conclusion

- 10.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that on balance the proposed diversion is in accordance with the Council's Public Path Order Policy.
- 10.2 The Order should be made as detailed in the Decision Plan and Decision Schedule.

AUTHORISATION

Under the authorisation granted by the Council on 12 May 2016, the Planning and Environmental Law Manager is hereby requested to seal an Order to divert public footpath CL24/107 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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Craig Jackson

Team Manager - Highways Maintenance and Drainage

Dated: 04/05/2017.....

**Appendix 1
Decision Plan**

Public Footpath CL24/107

Scale: 1:1000

Public footpath to be created

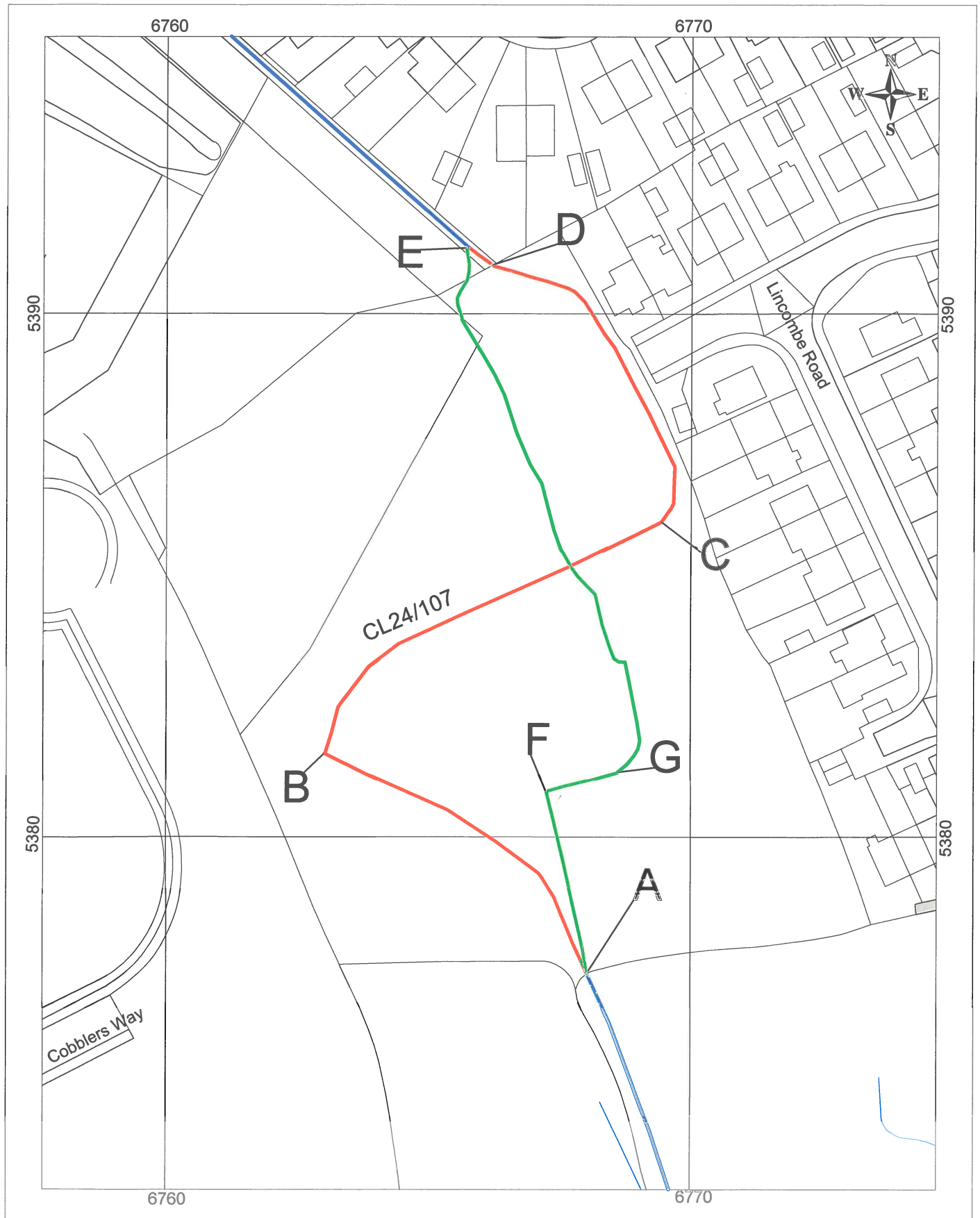
A F G E

Unaffected public footpath

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Public footpath to be stopped up

A B C D E



DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of public footpath CL24/107 commencing from a field boundary at grid reference ST 6768 5377 (Point A on the Decision Plan) and continuing in a generally north westerly direction for approximately 68 metres to grid reference ST 6763 5381 (Point B) and turning in a generally north easterly direction for approximately 81 metres to grid reference ST 6769 5386 (Point C) and turning in a generally north westerly direction for approximately 66 metres to a field boundary at grid reference ST 6766 5390 (Point D) and continuing in a generally north westerly direction for approximately 7 metres to grid reference ST 6765 5391 (Point E).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from a field boundary at grid reference ST 6768 5377 (Point A) and continuing in a generally northerly direction for approximately 36 metres to grid reference ST 6767 5380 (Point F) and turning in a generally easterly direction for approximately 15 metres to grid reference ST 6768 5381 (Point G) and turning in a generally northerly direction for approximately 114 metres to grid reference ST 6765 5391 (Point E).

Width: 2 metres between grid reference ST 6768 5377 (point A) and grid reference ST 6765 5391 (point E).

