

## **SECTION 257 TOWN & COUNTRY PLANNING ACT 1990**

### **APPLICATION FOR A PUBLIC PATH DIVERSION ORDER AFFECTING PUBLIC FOOTPATHS BA27/27 and BA27/28 IN KEYNSHAM**

#### **1. The Issue**

- 1.1 An application has been made to divert sections of Public Footpaths (FPs) BA27/27 and BA27/28 at Hygge Park, Keynsham. These changes are proposed to enable development to be carried out in accordance with planning permission 16/00850/OUT and 18/01307/RES (Residential Housing) and would be achieved by way of a Public Path 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 sections of FP BA27/27 and BA27/28 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 routes into a suitable condition for public use. Should an Order be made and confirmed, the Proposed Footpaths 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 Development Management 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 ways 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 under the Equality Act 2010.
- 5.4 In addition to the legislative tests detailed above, the proposals will 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,
- 5.6 The Authority will consider the effect on Climate Change.

## **6. Background and Application**

- 6.1 FPs BA27/27 and BA27/28 are recorded on the Definitive Map and Statement which have a relevant date of 26<sup>th</sup> November 1956. The legal alignment of these sections of FP have remained unchanged ever since.
- 6.2 The proposal is to divert a section of FPs BA27/27 commencing from Point A on the Decision Plan via Point F to Point B to a new line commencing from Point A via Points F, G and H to Point B.
- 6.3 Development is planned in accordance with planning permission 18/01307/RES (approval of reserved matters with regard to outline application 16/00850/OUT for residential and related development comprising approximately 250 dwellings, new Primary School with associated outdoor playing facilities, means of access thereto, associated open space, landscaping, access roads, footways/cycleways and infrastructure works). The footpaths must be formally diverted to allow for the development to take place. The diversion would be achieved by way of a Public Path 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 the section of public footpath commencing from a point approximately 17 metres from its junction with FP BA27/28 at grid reference ST 6656 6796 (point A on the Decision Plan) and proceeding in a generally east southeasterly direction for approximately 309 metres to grid reference ST 6683 6780 (point B) ("Existing FP 1").
- 6.5 The full width of the section of public footpath commencing from grid reference ST 6656 6805 (point C) and proceeding in a generally north northeasterly direction for approximately 43 metres to grid reference ST 6658 6809 (point D) and turning in a generally north northwesterly direction for approximately 141 metres to a junction with Bath Road at grid reference ST 6653 6822 (point E) ("Existing FP 2").
- 6.6 These routes are referred to collectively as the "Existing FPs".

### **Description of the Proposed Footpath**

- 6.7 A section of public footpath commencing from a point approximately 17 metres from its junction with FP BA27/28 at grid reference ST 6656 6796 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 49 metres to grid reference ST 6660 6796 (point F) and turning in a generally south southeasterly direction for approximately 93 metres to grid reference ST 6664 6788 (point G) and turning in a generally east northeasterly direction for approximately 42 metres to grid reference ST 6668 6789 (point H) and turning in a generally east southeasterly direction for approximately 168 metres to grid reference ST 6683 6780 (point B). Width: 3 metres between grid reference ST 6656 6796 (point A) and grid reference ST 6683 6780 (point B) ("Proposed FP 1").

6.8 A section of public footpath commencing from grid reference ST 6656 6805 (point C) and proceeding in a generally northerly direction for approximately 18 metres to grid reference ST 6656 6807 (point J) and continuing in a generally northerly direction for approximately 159 metres to a junction with Bath Road at grid reference ST 6653 6822 (point K). Width: 2 metres between grid reference ST 6656 6805 (point C) and grid reference ST 6656 6807 (point J) and 3.7 metres between grid reference ST 6656 6807 (point J) and grid reference ST 6653 6822 (point K) ("Proposed FP 2").

6.9 These routes are referred to collectively as the "Proposed FPs".

## **7. Consultations**

7.1 Affected 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 four weeks ("the Consultation Period"). Additionally site notices were erected at either end of the sections of footpaths 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. Bristol Water plc and Wales and West Utilities identified plant in the area but have no objections to the proposal. Their rights as statutory undertakers under the routes to be stopped up will be preserved in the Public Path Order.

7.3 Keynsham Town Council "*supported the proposed changes to the Rights of Way Network*". The Town Council requested that all paths/cycle paths implemented are of a good standard and that they are in place by 1<sup>st</sup> July 2019 but these comments relate to the temporary alternative routes which are being dealt with separately.

7.4 The Area Footpath Secretary for The Ramblers responded with '*I have no comments to make*'.

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

## **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 Footpaths run over land which has planning permission to be developed and built upon. If the footpaths are not diverted, the public rights of way will go through new dwelling houses. The Existing FPs are to be diverted along estate roads and along tarmac paths in order for the development to take place.

- 8.3 **The Authority must give due regard to the effect the diversion will have on biodiversity and members of the public with disabilities.**
- 8.4 The Proposed FPs will be over estate and tarmac paths whereas the Existing FPs are over undeveloped fields. The development as a whole may affect biodiversity 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 FPs are uneven and over land where there are small water courses. The Proposed FPs will be flat and over tarmac surfaces. This will 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 FPs 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 public do not currently follow the exact legal line of the Existing FPs (although the lines are freely available for use) but this will be rectified by the proposals. The Proposed FPs will therefore improve connectivity. The current surface of the Existing FPs is over open fields with small water courses. The Proposed FPs are over a laid out, tarmac surface and will be easier to traverse which should have a positive impact on those with mobility and visual impairments. The Proposed FPs will be created without any limitations and two kissing gates which are currently in situ will be removed, thus improving accessibility. The majority of the lengths of Proposed FPs will be adopted and maintained by the Council's Highways Department. The Proposed FPs will join up with the existing FPs on a graduated stretch of tarmac but there will be no significant gradients involved. The Proposed FPs vary in width between 2 metres and 3.7 metres which extends the available width for the public. There is no 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.

**8.7 Climate Change**

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.

**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 Public Path Diversion Order have been met and that on balance the proposed diversions are 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.

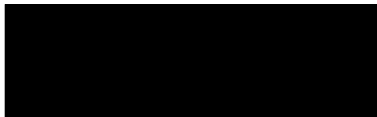
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**AUTHORISATION**

Under the authorisation granted by the Council on 10 May 2018, the Place Law Manager is hereby requested to seal an Order to divert:

- 1) a section of Public Footpath BA27/27 and
- 2) a section of Public Footpath BA27/28

as shown on the Decision Plan and detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



✓ Craig Jackson

Dated: ...23/10/19...

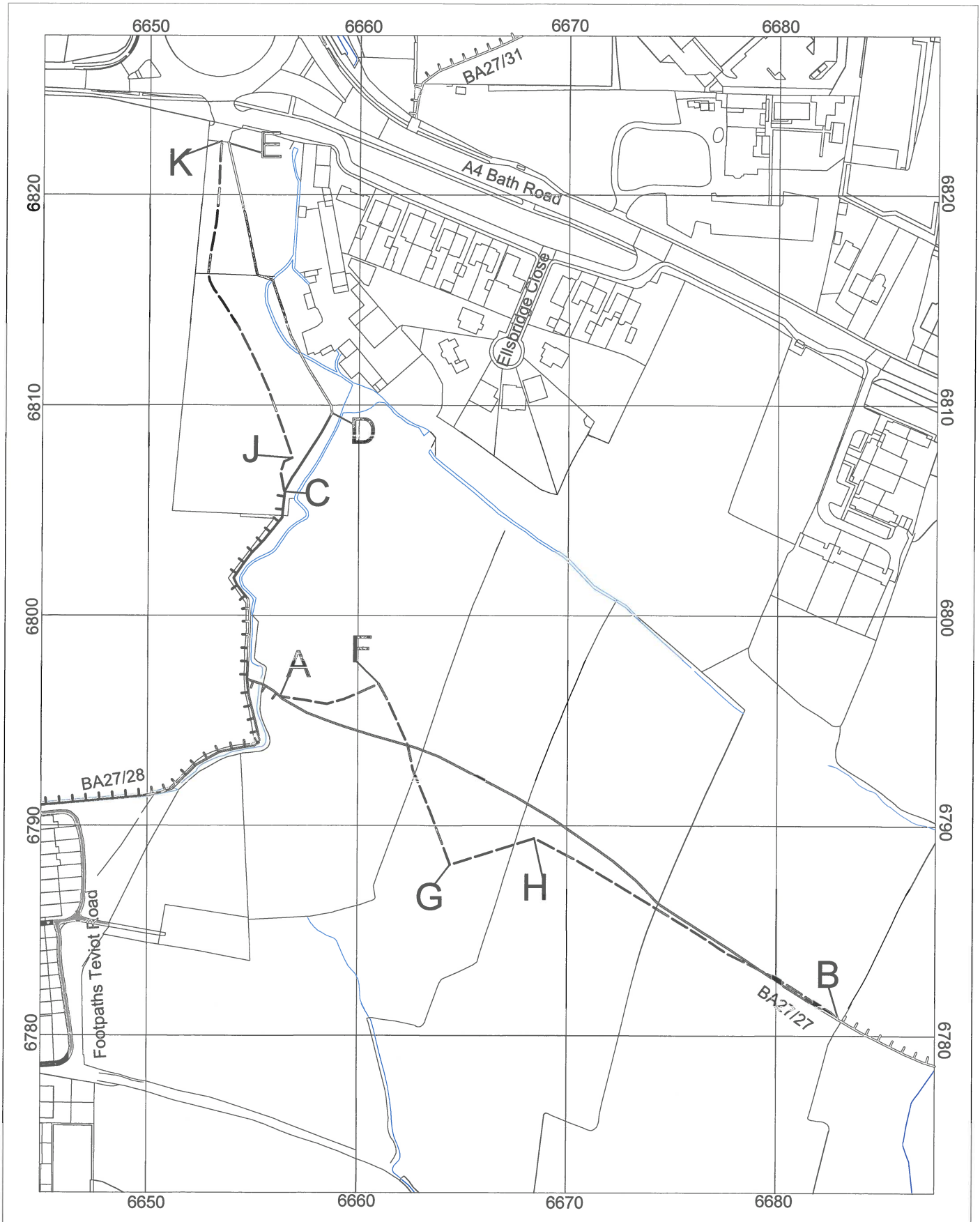
Team Manager - Highways Maintenance and Drainage

# Appendix 1 Decision Plan



Public footpath to be created A F G H B C J K  
 Unaffected public footpath —————  
 Public footpath to be stopped up A B C D E

Scale: 1:2,500







## **DECISION SCHEDULE**

### **PART 1**

#### **DESCRIPTION OF SITE OF EXISTING PATH OR WAY**

The full width of the section of public footpath commencing from a point approximately 17 metres from its junction with FP BA27/28 at grid reference ST 6656 6796 (point A on the Decision Plan) and proceeding in a generally east southeasterly direction for approximately 309 metres to grid reference ST 6683 6780 (point B).

The full width of the section of public footpath commencing from grid reference ST 6656 6805 (point C) and proceeding in a generally north northeasterly direction for approximately 43 metres to grid reference ST 6658 6809 (point D) and turning in a generally north northwesterly direction for approximately 141 metres to a junction with Bath Road at grid reference ST 6653 6822 (point E).

### **PART 2**

#### **DESCRIPTION OF SITE OF NEW PATH OR WAY**

A section of public footpath commencing from a point approximately 17 metres from its junction with FP BA27/28 at grid reference ST 6656 6796 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 49 metres to grid reference ST 6660 6796 (point F) and turning in a generally south southeasterly direction for approximately 93 metres to grid reference ST 6664 6788 (point G) and turning in a generally east northeasterly direction for approximately 42 metres to grid reference ST 6668 6789 (point H) and turning in a generally east southeasterly direction for approximately 168 metres to grid reference ST 6683 6780 (point B).

Width: 3 metres between grid reference ST 6656 6796 (point A) and grid reference ST 6683 6780 (point B).

A section of public footpath commencing from grid reference ST 6656 6805 (point C) and proceeding in a generally northerly direction for approximately 18 metres to grid reference ST 6656 6807 (point J) and continuing in a generally northerly direction for approximately 159 metres to a junction with Bath Road at grid reference ST 6653 6822 (point K).

Width: 2 metres between grid reference ST 6656 6805 (point C) and grid reference ST 6656 6807 (point J).

3.7 metres between grid reference ST 6656 6807 (point J) and grid reference ST 6653 6822 (point K).

