

SECTION 257 TOWN & COUNTRY PLANNING ACT 1990

APPLICATION FOR A PUBLIC PATH DIVERSION ORDER AFFECTING PUBLIC FOOTPATH BC15/1, NEWBRIDGE

(Ward: Newbridge)

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath BC15/1 in Newbridge. The change is proposed to enable development to be carried out by Minerva Bath Rowing Club in accordance with planning permission 23/01861/FUL 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 BC15/1 ("the Existing FP") 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 Proposed Footpath ("the Proposed FP") is already suitable for public use and used by the public as a permissive path. Should an Order be made and confirmed, the Proposed FP 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. 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,
- 5.6 The Authority will consider the effect on Climate Change.

6. Background and Application

- 6.1 Public Footpath BC15/1 is recorded on the Definitive Map and Statement by the City of Bath DMMO (No.4 - Newbridge) 2006 made 15th November 2006 and confirmed 25th April 2007 with a relevant date of 10th October 2006. The legal alignment has remained unchanged since confirmation.
- 6.2 The proposal is to divert a section of public footpath BC15/1 from a field managed and owned by trustees of Minerva Bath Rowing Club to an adjoining area which is managed and owned by Bath & North East Somerset Council, part of which has Village Green status. The Proposed Footpath is already in use by the public as a permissive path. Bath and North East Somerset Council have agreed to the Proposed Footpath being on council-owned land.
- 6.3 Development is planned in accordance with planning permission 23/01861/FUL (Erection of 2no. new buildings including a boat shed and a new land training facility for club members). The footpath needs to be formally diverted to allow for the development to be carried out. 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 the section of public footpath BC15/1 commencing from a junction with Public Footpath BC15/2 at grid reference ST 7175 6587 (point A on the Decision Plan) and proceeding in a generally northerly direction for approximately 96 metres to grid reference ST 7177 6596 (point B on the Decision Plan). This route is referred to as “the Existing FP”.

Description of the Proposed Footpath

- 6.5 A section of public footpath commencing from a junction with Public Footpath BC15/2 at grid reference ST 7177 6589 (Point A on the Decision Plan) and proceeding in a generally northerly direction for approximately 57 metres to grid reference ST 7177 6594 (point D on the Decision Plan) and turning in a generally north northeasterly direction for approximately 20 metres to grid reference ST 7177 6596 (Point B On the Decision Plan). This route would be 2 metres wide throughout and is referred to as “the Proposed FP”.

7. Consultations

- 7.1 Affected landowners, 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 Existing and Proposed FPs 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 BT Openreach advised that they required rights in respect of their existing apparatus to be preserved in the Order and so the standard clause is to be included in the diversion order.
- 7.4 All affected landowners are in agreement with the proposal.
- 7.5 No other comments were received in relation to these proposals during the Consultation Period and copies of the consultation 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 FP 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 the new buildings. It is proposed that the Existing FP is diverted to adjoining land 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 Existing FP is over an undeveloped field which has planning permission for development. 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. A minimum 10% measurable biodiversity net gain, and a Habitat Management Plan for any on-site habitats and biodiversity measures are conditions in the planning consent. The Proposed FP is already in use as a permissive path and therefore this is unlikely to affect biodiversity; biodiversity of the area as a whole should therefore improve. The current surface of the Existing FP is uneven whereas the Proposed FP would have a delineated, managed surface and would therefore be easier to traverse (it is actually already the route of choice for many walkers). Consequently, there is likely to be a positive impact on those with mobility and visual impairments. Farming and forestry are unaffected by the proposal.
- 8.5 **The effect of the diversion on the additional criteria identified in the Authority's Public Path Order Policy ("the Policy"); namely, Connectivity, Equalities Impact, Gaps and Gates, Gradients, Maintenance, Safety, Status, Width and Features of Interest.**
- 8.6 The Proposed FP is an identifiable, worn path with a smoother surface than the Existing FP which is in an undeveloped field and will be easier for those with mobility or visual impairments to traverse (see paragraph 8.4 above). Although the gradient is the same for the Existing and

Proposed FPs, steps are already in situ on the steep section of the Proposed FP thus improving safety for walkers. The Proposed FP will be created without any limitations and will avoid a gap in a field boundary, thus improving accessibility. The Proposed FP does not have any impact on connectivity, status, width or features of interest. 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 proposal is part of the ongoing management of the network and therefore contributes towards helping to tackle the Climate Emergency.

10. Risk Management

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

11. Conclusion

- 11.1 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.
- 11.2 The Order should be made as detailed in the Decision Plan and Decision Schedule.

AUTHORISATION

Under the authorisation granted by the Council on 21st July 2022, the Team Leader: Place Legal Services is hereby requested to seal an Order to divert a section of Public Footpath BC15/1 as shown on the Decision Plan and detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



Dated: 16/01/2025

Craig Jackson

Team Manager - Highways Maintenance and Drainage

Appendix 1
The Decision Plan
Public Footpath BC15/1, Newbridge

Public Footpath to be stopped up

A  B

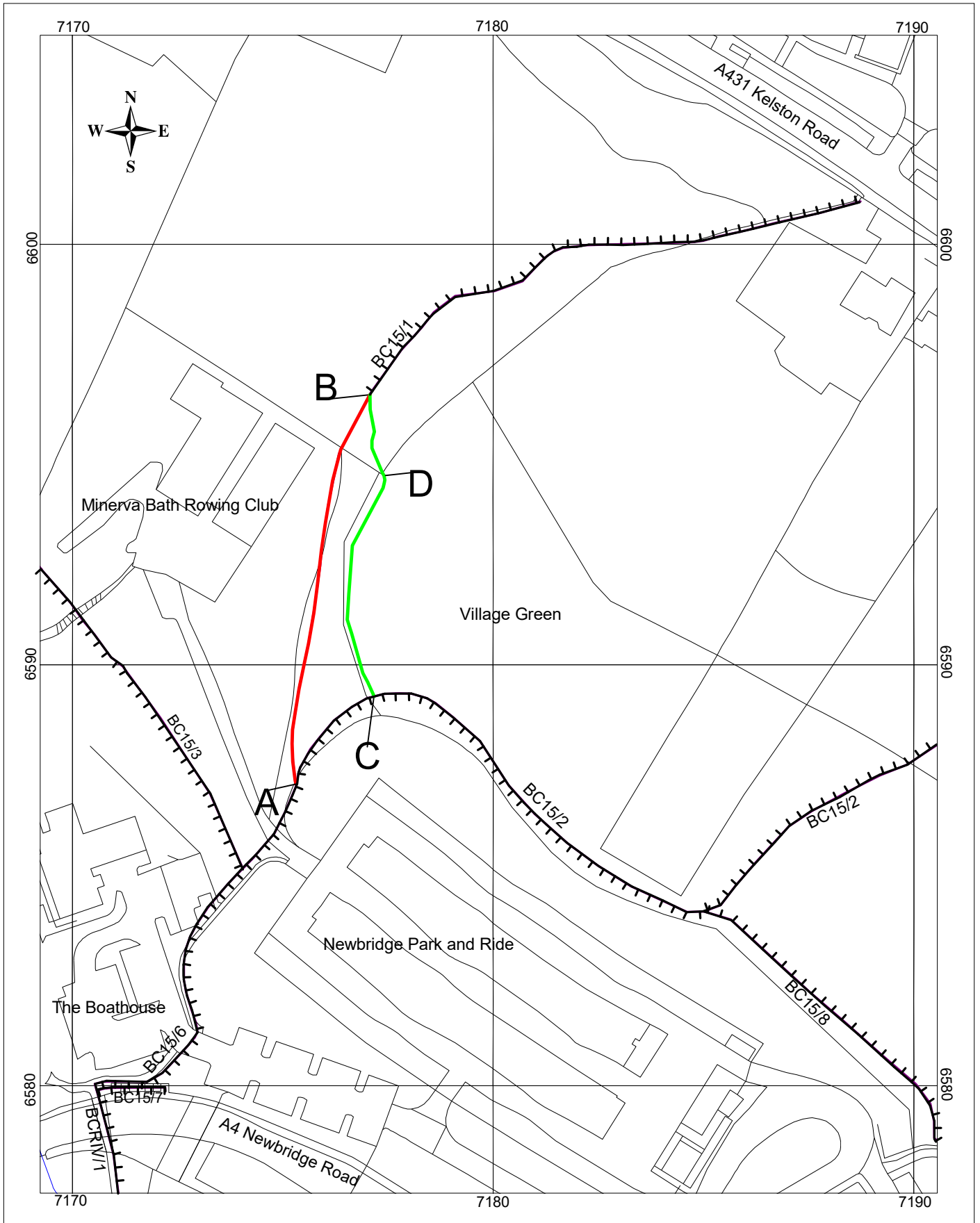
Public Footpath to be created

C  D B

Unaffected public footpath



Scale: 1:1,250



DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of Public Footpath BC15/1 commencing from a junction with Public Footpath BC15/2 at grid reference ST 7175 6587 (Point A on the Decision Plan) and proceeding in a generally northerly direction for approximately 96 metres to grid reference ST 7177 6596 (Point B on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from a junction with Public Footpath BC15/2 at grid reference ST 7177 6589 (Point C on the Decision Plan) and proceeding in a generally northerly direction for approximately 57 metres to grid reference ST 7177 6594 (Point D on the Decision Plan) and turning in a generally north northeasterly direction for approximately 20 metres to grid reference ST 7177 6596 (Point B on the Decision Plan).

Width: 2 metres between grid reference ST 7177 6589 (point C on the Decision Plan) and grid reference ST 7177 6596 (point B on the Decision Plan).