

**APPLICATION FOR A PUBLIC PATH DIVERSION  
ORDER AFFECTING PUBLIC FOOTPATH CL20/5 IN  
THE PARISH OF STOWEY SUTTON**

**1. The Issue**

- 1.1 An application has been made to divert a section of Public Footpath CL20/5 in the Parish of Stowey Sutton further away from the front patio doors of an adjacent residential property, "The Piggery".

**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 CL20/5 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,

5.8 The Authority will consider the effect on Climate Change.

## **6. Background and Application**

6.1 Public Footpath CL20/5 is recorded on the Definitive Map and Statement which has a relevant date of 26 November 1956. To date, the legal alignment of the public footpath has remained unchanged.

6.2 Public Footpath CL20/5 runs between The Street and Low Veale Lane in Stowey. The western end of the path runs from The Street and up approximately the first 40 metres of an otherwise private vehicular access track shared by the owner/occupiers of several residential properties<sup>1</sup>. It then crosses one of these properties diagonally<sup>2</sup>, before exiting into an agricultural field. The applicant (the intended future occupier of The Piggery) wishes to divert the public further away from the front door and patio of that property so that it follows a line adjacent to the fence marking the approximate boundary of Lilac Cottage<sup>3</sup>, the property immediately to the north.

### **6.3 Description of the Existing Footpath**

The proposal is to divert the full width of the section of Public Footpath CL20/5 commencing from grid reference ST 5978 5990 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 18 metres to grid reference ST 5980 5990 (point B on the Decision Plan), and then turning in a generally east north-easterly direction for approximately 19 metres to grid reference ST 5982 5990 (point C on the Decision Plan). This route is referred to as the “Existing Footpath”.

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

The proposed new route commences from grid reference ST 5978 5990 (point A on the Decision Plan) and proceeds in a generally east north-easterly direction for approximately 6 metres to grid reference ST 5979 5990 (point D on the Decision Plan), and then turns in a generally easterly direction for approximately 31 metres to grid reference ST 5982 5990 (point C on the Decision Plan). The width would be two

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<sup>1</sup> Including The Piggery, Highbanks & Trielda Cottage

<sup>2</sup> The Piggery

<sup>3</sup> Although see paragraph 7.4 below

metres between points A & C. This route is referred to as the "Proposed Footpath".

#### **6.5 Limitations and Conditions**

No limitations or conditions are proposed.

### **7. Consultation**

- 7.1 Affected landowners, Stowey Sutton 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 Initially, two objections to the proposals were received: a letter from an agent representing Objector 1 and an e-mail from Objectors 2 & 3.
- 7.4 Objector 1 claimed that part of the land that the Proposed Footpath would run across was owned by her and that consequently, she objected to the application on the grounds that the proposals would devalue her property. However, following subsequent discussions between the applicant's son<sup>4</sup> and Objector 1's agent this particular objection has been formally withdrawn with Objector 1 also providing her express consent to the application. For the purposes of this report, this first objection can therefore now be disregarded.
- 7.5 Objectors 2 & 3 stated that their joint objection related only to "the first metre beyond Point A on the plan associated with the Application Form" (which they contended was in a different place to Point A on the Consultation Notice). They objected to this part of the diversion on two grounds: firstly, on the basis that it would substantially hamper the vehicular access to their own property, further up the access track by restricting their reversing/turning space; and secondly on public safety grounds, arguing that they would have no visibility of persons exiting that section of the footpath when reversing their motor vehicle.
- 7.6 Objectors 2 & 3 also made the following comments:
- The plot of land upon which Point A is situated is the responsibility of a named third party ("the Leaseholder") rather than the applicant's son and consequently, the first part of the Proposed Footpath (i.e. the part immediately following Point A)

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<sup>4</sup> The freehold owner of The Piggery

is not within land either occupied by the applicant or owned by the applicant's son;

- The Leaseholder had not been consulted on the proposals to divert the public footpath;
- Neither had Objector 1 been consulted on the proposals;
- The Existing Footpath was blocked off by hoardings in January 2021 and remains blocked off;
- Delivery vehicles (and potentially emergency vehicles) have been hampered by the erection of the hoardings across the Existing Footpath;
- The applicant's son did not present an application to divert the public footpath at the time of seeking planning permission for the building work at The Piggery;
- The applicant's son should erect the Piggery's gate one metre back from the position of the current hoardings;
- Failing that, the width of the first metre of the Proposed Footpath, from Point A, should be 2.13 metres rather than 2 metres;
- There was an error in the wording of the Consultation Notice: "new footpath to go A to C via B" should have read "new footpath to go A to C via D";
- The Consultation Notice sited at Point A could have been more prominent, as it was "somewhat obscured by trees/overgrowth".

7.7 An e-mail was received from Stowey Sutton Parish Council ("Representee 1"), stating that they would not object to the proposals, provided:

- The Consultation Plan is accurate;
- The Proposed Footpath's width will be "limited to two metres";
- The Highway Authority consults "with the neighbouring properties affected, as is proper".

7.8 An e-mail was also received from another neighbouring resident ("Representee 2"), stating that he did not have any direct objections to the footpath being moved but was concerned about motor vehicles being forced to reverse along the lane towards the Proposed Footpath's entrance/exit, as he considered this created a major hazard for both drivers and footpath users. He went on to propose that the

application be granted, subject to the condition that the gated entrance to the property be moved back by such a distance that will enable motor vehicles to reverse, without having to drive onto the Proposed Footpath.

- 7.9 No other comments were received in relation to the proposals during the Consultation Period.
- 7.10 The above objections and comments are now considered in turn:
- 7.11 **Point A on the plan which accompanied the application form is in a different place to Point A on the Consultation Plan:** The plan which accompanied the application form was annotated by the applicant rather than the Authority. Although, when interpreted in conjunction with the applicant's description of the desired diversion on the application form itself, this identified the route of the Proposed Footpath to a sufficient extent to enable the Authority to begin processing the application, the Authority then drew the Proposed Footpath's entire line – accurately, precisely and to scale - when it produced the Consultation Plan. It was this latter plan which was subsequently consulted upon.
- 7.12 **The proposed diversion of the footpath will substantially hamper vehicular access to properties further up the access track by restricting the reversing/turning space of residents' motor vehicles:** Whilst this objection is noted, it is not relevant to the statutory or policy considerations relating to the diversion of footpaths. However, even if it was relevant to these considerations, the first five and a half metres of the Existing Footpath similarly runs across the access track and consequently, the Authority does not consider the ease, or otherwise, of vehicular access is at all affected by switching this first six metres of path from an easterly, to an east-north-easterly line.
- 7.13 **When reversing their motor vehicles, drivers will have no visibility of persons exiting the Proposed Footpath:** This is considered in detail in paragraphs 8.16 to 8.18 below.
- 7.14 **The plot of land upon which Point A is situated is the responsibility of a named third party ("the Leaseholder"), rather than the applicant's son and consequently, the first part of the Proposed Footpath (i.e. the part immediately following Point A) is not within land either occupied by the applicant or owned by her son:** The Land Register records the Leaseholder as the leasehold owner of the plot of land between Points A and D on the Decision Plan; and records the applicant's son as the freehold owner of this same plot of land.
- 7.15 **Neither the Leaseholder nor Objector 1 have been consulted on the proposals to divert the public footpath:** The Authority sent both The Leaseholder and Objector 1 a copy of the proposals on 14 September 2023.

- 7.16 **The Existing Footpath was blocked off by hoardings in January 2021 and remains blocked off:** At the time the application was submitted, the line of the Existing Footpath was obstructed, in two places, by metal fencing. However, the relevant sections of fence panel were subsequently removed in late April/early May 2024, at the Authority's request. Consequently, the line of the Existing Footpath is no longer obstructed in this manner.
- 7.17 **Delivery vehicles (and potentially emergency vehicles) have been hampered by the erection of the hoardings across the Existing Footpath:** This is not relevant to the statutory or policy considerations relating to the diversion of footpaths.
- 7.18 **The applicant's son did not present an application to divert the public footpath at the time of seeking planning permission for the building work at The Piggery:** The fact that the applicant's son did not present an application to divert the public footpath at this early point in time does not prevent the applicant (or indeed her son) from presenting such an application at a later date, and that application then being assessed in accordance with the standard statutory and policy considerations relating to the diversion of footpaths.
- 7.19 **The applicant's son should erect the Piggery's gate one metre back from the position of the "current hoardings":** The Authority will not permit any new gate to be erected at any point across any part of the width of either the Existing Footpath (while it remains in existence) or the Proposed Footpath (if it subsequently comes into existence, unless it can be shown that such a gate is necessary for stock control within the meaning of Section 147 Highways Act 1980). Any gate erected anywhere other than on or across these two lines, at such times, has no relevance to the statutory and policy considerations relating to the diversion of footpaths and falls outside the Authority's jurisdiction.
- 7.20 **Failing that, the width of the first metre of the Proposed Footpath, from Point A, should be 2.13 metres rather than 2 metres":** This is considered in paragraph 8.20 below.
- 7.21 **There was an error in the wording of the Consultation Notice - "new footpath to go A to C via B" should have read "new footpath to go A to C via D:** The Authority acknowledges this error, but notes that the Proposed Footpath was correctly delineated on the Consultation Plan which accompanied the notice. It therefore considers this error minor and unlikely to have adversely affected interpretation of the proposals consulted upon.
- 7.22 **The Consultation Notice sited at Point A could have been more prominent, as it was "somewhat obscured by trees/overgrowth":** An element of pragmatism was required when siting this particular notice, as displaying it in the most prominent position possible would

have meant siting it in the middle of the vehicular track, impeding the access of motor vehicles to the neighbouring properties. In any event, the notice in question remained in situ throughout the entire four-week consultation period and remained visible to walkers at every seven to ten-day inspection visit made by the Authority.

- 7.23 **The Authority must satisfy itself that the Consultation Plan is accurately drawn:** In accordance with its standard practice, the Authority had already verified this before the consultation commenced (see also paragraph 7.11 above).
- 7.24 **The width of the Proposed Footpath must be “limited to” two metres:** The Authority has stipulated that the Proposed Footpath must be two metres wide across its entire length (i.e. rather than the 1.2-metre width originally sought by the applicant).
- 7.25 **The Authority must consult “with the neighbouring properties affected, as is proper”:** During the Consultation Period, the Authority formally wrote directly to all parties believed to legally own land affected by or bordering the Proposed Footpath (in accordance with its standard practice). Additionally, Consultation Notices and Plans were displayed in prominent positions at either end of the affected section of footpath. These steps will be repeated during the statutory consultation, should a Public Path Diversion Order subsequently be made.
- 7.26 **Motor vehicles being forced to reverse along the lane towards the Proposed Footpath’s entrance/exit, creates a major hazard for both drivers and footpath users:** This is considered in detail in paragraphs 8.16 to 8.18 below.
- 7.27 **The application should be granted, subject to the condition that the gated entrance to the property be moved back by such a distance that will enable motor vehicles to reverse, without having to drive onto the Proposed Footpath:** see comments at paragraph 7.19 above.

## **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 diagonally across The Piggery and passes within a metre of the French windows of the bungalow situated there. In contrast, the Proposed Footpath would divert walkers several metres away from The Piggery’s French windows, improving privacy for the bungalow’s occupier.



The diversion of the footpath would therefore be expedient in the interests of the occupier 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 will have the same termination points as the Existing Footpath so this second test is also met.
- 8.4 **The path must not be substantially less convenient to the public as a consequence of the diversion:** Matters such as length and difficulty of walking pertain to convenience to the public. The Proposed Footpath would be the same length as the Existing Footpath and there would be no difference between the two paths in terms of the difficulty of the walking. It therefore follows that the Proposed Footpath is not considered substantially less convenient to the public and 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 Existing Footpath runs diagonally across the driveway of the Piggery before passing within a metre of its French windows. In contrast, walkers on the Proposed Footpath would follow a two-metre wide strip running parallel to the Piggery's driveway and patio but remaining several metres away from the bungalow itself. As walkers would therefore no longer have to walk up The Piggery's drive, cross its patio and pass within a metre of its windows, the effect on public enjoyment of the Proposed Footpath as a whole is considered positive, thus meeting this test.
- 8.7 **Effect on other land served by the existing footpath and land affected by the proposed footpath:** The owner of The Piggery will benefit from the removal of the Existing Footpath as the public right of way will no longer pass over that property's drive or patio. Similarly, the Proposed Footpath will run along a strip of land adjoining agricultural land but which is not itself used for agriculture.

As 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, it is considered that this test is met.

- 8.8 **Effect on land affected by any proposed new path, taking into account the provision for compensation:** Both the owner of The Piggery and the owner of Lilac Cottage, immediately to the north, have claimed ownership of at least part of the two-metre wide strip of land crossed by the Proposed Footpath. However, the owner of Lilac

Cottage has consented to the diversion proposals and has not expressed any intention to claim compensation. The strip of land in question also lies outside the current fenced boundary of Lilac Cottage. Taking these three elements into account, together with the Proposed Footpath's relatively modest length, it is not considered that there would be an adverse effect on the land affected by the proposed new path.

- 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:** It is not considered that the diversion will have any effect on farming, forestry or biodiversity. Members of the public with auditory, visual or mobility impairments may benefit from the reduction in the amount of footpath which would be shared with motor vehicles (see paragraph 8.18 below). The proposed diversion would have a neutral effect on people with other impairments.
- 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 would start and finish at the same point as the Existing Footpath so there would be no effect on connectivity.
- 8.12 There will be a positive effect on people with auditory, visual or mobility impairments (see paragraph 8.9 above).
- 8.13 There are no gates on the Existing Footpath. Equally, there would be no gates on the Proposed Footpath.
- 8.14 Similarly there would be no difference in gradient between the Proposed & Existing Footpaths.
- 8.15 Maintenance of the Proposed Footpath would be similar to maintenance of the Existing Footpath.
- 8.16 With regard to safety, it has been suggested<sup>5</sup> that motor vehicles being forced to reverse along the lane towards the Proposed Footpath's western entrance/exit would create a major hazard for both drivers and footpath users. Objectors 2 & 3 have gone further, expressing concern that drivers reversing their vehicles will have no visibility of persons exiting the section of Proposed Footpath adjacent to The Piggery's drive.
- 8.17 The latter concern appears to be based upon the assumption that any new permanent fence erected by the landowner, following a successful diversion of the footpath, would be sited in exactly the same place as the temporary fencing which is currently in place and

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<sup>5</sup> By Objectors 2 & 3; and by Representee 2

which can be seen in the photograph at Appendix 3, and that the thick wooden post at the beginning of this line of fencing (also shown in the photograph) would similarly remain in place. However, the temporary fencing has been sited at a width of just 1.2 metres from the lower wooden fencing on the opposite side. As the Proposed Footpath would be two metres in width (see paragraph 8.20 below), the Authority would require both the temporary fencing and the thick wooden post to be removed before the new path would be permitted to open (otherwise these items would unlawfully obstruct the new path). Any permanent fence which the landowner might subsequently want to put in place would need to be sited at least 0.8 metres to the right of the temporary fencing shown in the photograph at Appendix 3, thus preserving the full two-metre width of the footpath.

8.18 Returning however to the general concern expressed about reversing vehicles coming into conflict with walkers, it is considered that the proposed diversion will make little difference to any such issue on the vehicular access track as the Existing Footpath already runs along this track and the Proposed Footpath would simply be changing the angle of the last few metres that the footpath takes along this track, before entering The Piggery. Furthermore, upon reaching the end of the access track, the Proposed Footpath would run along a two-metre wide strip to the side of The Piggery's driveway, rather than diagonally across the middle of the driveway itself, as the Existing Footpath does. Approximately 20 metres of the footpath would therefore be removed from The Piggery's driveway, having a positive impact on safety.

8.19 The Proposed Footpath would have a neutral impact on status.

8.20 As regards width, the Existing Footpath is presumed to be 1.8 metres wide; the Proposed Footpath would be two metres wide. It has been suggested that the first metre at the western end of the Proposed Footpath should be 2.13 metres wide rather than two metres wide. However, as this is a route which is not heavily trafficked, either by vehicles or walkers, two metres is considered sufficient for two people on foot to pass one another comfortably. It is not considered that an additional 13 centimetres will form any useful public utility.

8.21 The Proposed Footpath would not remove public access from any feature of interest or place of resort, nor would it diminish the quality or diversity of any views.

8.22 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 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 the proposal is in line with the Public Path Order Policy.

11.2 The Diversion Order would be in the interests of the occupier of the land.

11.3 The Order should be made as proposed.

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### **AUTHORISATION**

Under the authorisation granted by the Council on 21<sup>st</sup> July 2022, the Team Leader: Place Legal Services is hereby requested to seal an Order to divert a section of Public Footpath CL20/5 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



Dated: 18/09/2024

Craig Jackson – Team Manager, Highways Maintenance and Drainage



## **APPENDIX 2 - DECISION SCHEDULE**

### **PART 1**

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

The full width of the section of Public Footpath CL20/5 commencing from grid reference ST 5978 5990 (point A on the Decision Plan) and proceeding in a generally easterly direction for approximately 18 metres to grid reference ST 5980 5990 (point B on the Decision Plan), and then turning in a generally east north-easterly direction for approximately 19 metres to grid reference ST 5982 5990 (point C on the Decision Plan).

### **PART 2**

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

A public footpath commencing from grid reference ST 5978 5990 (point A on the Decision Plan) and proceeding in a generally east north-easterly direction for approximately 6 metres to grid reference ST 5979 5990 (point D on the Decision Plan), and then turning in a generally easterly direction for approximately 31 metres to grid reference ST 5982 5990 (point C on the Decision Plan).

Width: 2 metres between grid references ST 5978 5990 (point A on the Decision Plan) and ST 5982 5990 (point C on the Decision Plan).

### **PART 3**

#### **LIMITATIONS AND CONDITIONS**

None.



APPENDIX 3

