

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH CL6/38 IN
CLUTTON**

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath CL6/38 in Clutton to enable the landowner to better manage the land.

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 CL6/38 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,

6. Background and Application

6.1 Public footpath CL6/38 is recorded on the Definitive Map and Statement which has a relevant date of 26 November 1956. The western end of the footpath was subsequently diverted under the Bath and North East Somerset District Council (Former Clutton Rural District Area)(No 1) Definitive Map and Statement Modification Order 1998 – relevant date 31st July 1998 - to accommodate the building of an industrial estate.

6.2 The Existing Footpath runs through a one-metre wide passage between the boundary of the said industrial estate and a fenced dog walking enclosure before descending a steep earth embankment. The landowner wishes to divert the footpath onto the land currently used for dog walking (but to no longer be, going forward). Some of the palisade fencing enclosing that area would be removed and walkers would instead follow a three-metre wide footpath, fenced on both sides, for approximately 79 metres before emerging from the fenced section and continuing along gently sloping level ground, avoiding the steep embankment, before joining public footpath CL6/37 approximately 84 metres further west from where it presently meets that other path. The landowner wishes to divert the footpath in this way to enable him to better manage the land over which it currently runs.

6.3 Description of the Existing Footpath

The proposal is to divert the full width of the section of Public Footpath CL6/38 commencing from grid reference ST 6337 5764 (point A on the Decision Plan) proceeding in a generally east north-easterly direction for approximately 46 metres to grid reference ST 6341 5766 (point B on the Decision Plan), and turning in a generally east south-easterly direction for approximately 124 metres to a junction with public footpath CL6/37 at grid reference ST 6352 5760 (point C on the Decision Plan) would be stopped up. 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 6337 5764 (point A on the Decision Plan) and proceeds in a generally south south-easterly direction for approximately 38 metres to grid reference ST 6338 5760 (point D on the Decision Plan), and turning in a generally

east north-easterly direction for approximately 41 metres to grid reference ST 6342 5762 (point E on the Decision Plan), and turning in a generally south south-easterly direction for approximately 40 metres to a junction with public footpath CL6/37 at grid reference ST 6344 5758 (point F on the Decision Plan). The width would be three metres between points A & E, and two metres between points E & F. This route is referred to as the "Proposed Footpath".

6.5 Limitations and Conditions

No limitations or conditions are proposed.

7. Consultations

- 7.1 The affected landowner, Clutton Parish Council, national and local user groups, the Ward Councillor 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 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 and/or that they had no objections to the proposals.
- 7.3 No other comments were received in relation to the proposals during the Consultation Period.

8. Officer Comments

- 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 across land which the applicant (also the landowner) wishes to build on. With the Proposed Footpath walkers would instead follow an initially fenced and then unfenced route across land which the landowner does not wish to develop. Consequently, it would be expedient to divert the path in the interests of the landowner 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 starts at the same point as the Existing Footpath and finishes at a point on Public Footpath CL6/37 approximately 84 metres away from the point where the Existing Footpath currently meets that other footpath. The characteristics of the new and old junctions are very similar. Additionally, the Proposed Footpath will run along gently sloping

ground for its entire length, in contrast to the Existing Footpath which descends a steep embankment. This test is therefore considered to have been met.

- 8.4 **The path must not be substantially less convenient to the public as a consequence of the diversion:** Matters such as length, difficulty of walking and the purpose of the path pertain to the convenience to the public. The overall length of the diverted route will be 33 metres longer than the length of the existing route which is considered an insignificant increase given the predominant leisure use of the footpath. Furthermore, the section of Proposed Footpath between points A & E will be two metres wider than the awkward narrow section of Existing Footpath between points A & G. It therefore follows that the Proposed Footpath is not 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 section of the Existing Footpath between points A & G is only a metre wide and making it very difficult for two people walking in opposite directions to pass one another at all (let alone comfortably). In contrast, the section of the Proposed Footpath which would replace this narrow section would be three metres wide and therefore easier, and more pleasant, for people to walk.
- 8.7 **Effect on other land served by the existing footpath and land affected by the proposed footpath:** The applicant's land will benefit from the removal of the Existing Footpath as this will facilitate its future management and re-development. Similarly, the Proposed Footpath will not have an adverse effect on the applicant's land as its future re-development will be based around the new legal line of the path. This test should therefore be considered to have been met.
- 8.8 **Effect on land affected by any proposed new path, taking into account the provision for compensation:** There is no adverse effect on land affected by the Proposed Footpath with regard to compensation as the Existing Footpath already crosses the same land, all of which is owned by the applicant in any event.
- 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:** Between points B & C the Existing Footpath runs down a steep earth embankment. However, the Proposed Footpath will run along gently sloping ground for its entire length and will therefore have a positive effect on members of the public with impaired mobility and/or visual disabilities. There will be neutral effects on farming, forestry and biodiversity.

- 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 starts at the same point as the Existing Footpath and finishes at a point on Public Footpath CL6/37 approximately 84 metres away from the point where the Existing Footpath currently meets that other footpath. This will have a minimal effect on connectivity.
- 8.12 As the Proposed Footpath will negate the need for walkers to negotiate a steep earth embankment it will have a positive impact on members of the public with impaired mobility and/or visual impairments (see paragraph 8.9 above). The proposed diversion will have a neutral effect on people with other disabilities.
- 8.13 The Existing Footpath has no gates. Similarly, the Proposed Footpath will not. This is in keeping with the principles of 'Least Restrictive Access' in the Authority's Public Path Order Policy.
- 8.14 There is a decrease in gradient on the Proposed Footpath compared with the Existing Footpath as the latter descends a steep earth embankment shortly after point B (when walking south-eastwards).
- 8.15 The narrow section of the Existing Footpath between points A & G frequently gets overgrown with vegetation. Contrastingly, the replacement section between points A & E will be hard-surfaced with aggregate and will therefore not require strimming, thus reducing the maintenance burden.
- 8.16 The Proposed Footpath will improve walkers' safety, as they will no longer have to negotiate the steep embankment between points B & C.
- 8.17 The Proposed Footpath will have a neutral impact on Status.
- 8.18 The Proposed Footpath will be two metres wider between points A & E than the Existing Footpath is between points A & G. The remainder of the Proposed Footpath will be two metres wide – the same width as the remainder of the Existing Footpath (between points E & C).
- 8.19 The Proposed Footpath will not remove public access from any feature of interest or place of resort, nor will it diminish the quality or diversity of any views.
- 8.20 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 footpath.

10. Conclusion

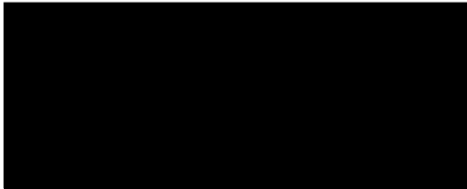
10.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposal is in line with the Public Path Order Policy.

10.2 The Diversion Order would be in the interests of the landowner.

10.3 The Order should be made as proposed.

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 CL6/38 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: 26/07/22.....

Graeme Stark – Principal Officer: Public Rights of Way

APPENDIX 2 - DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of Public Footpath CL6/38 commencing from grid reference ST 6337 5764 (point A on the Decision Plan) proceeding in a generally east north-easterly direction for approximately 46 metres to grid reference ST 6341 5766 (point B on the Decision Plan) and turning in a generally east south-easterly direction for approximately 124 metres to a junction with public footpath CL6/37 at grid reference ST 6352 5760 (point C on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from grid reference ST 6337 5764 (point A on the Decision Plan) and proceeding in a generally south south-easterly direction for approximately 38 metres to grid reference ST 6338 5760 (point D on the Decision Plan), and turning in a generally east north-easterly direction for approximately 41 metres to grid reference ST 6342 5762 (point E on the Decision Plan), and turning in a generally south south-easterly direction for approximately 40 metres to a junction with public footpath CL6/37 at grid reference ST 6344 5758 (point F on the Decision Plan).

Width: 3 metres between grid references ST 6337 5764 (point A on the Decision Plan) and ST 6342 5762 (point E on the Decision Plan).

2 metres between grid references ST 6342 5762 (point E on the Decision Plan) and ST 6344 5758 (point F on the Decision Plan).

PART 3

LIMITATIONS AND CONDITIONS

None.

**Appendix 1 - Decision Plan
Public Footpath CL6/38,
Marsh Lane, Clutton**

Public footpath to be added
Unaffected public footpath
Public footpath to be stopped up



Scale 1:1000

