

**APPLICATION FOR A PUBLIC PATH DIVERSION  
ORDER AFFECTING PUBLIC FOOTPATH BA2/33 IN  
BATHEASTON**

**1. The Issue**

- 1.1 An application has been made to divert a section of Public Footpath BA2/33 in Batheaston away from a yard containing farm materials and machinery so that walkers will instead follow an existing path through a field.

**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 BA2/33 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 BA2/33 is recorded on the Definitive Map and Statement which has a relevant date of 26 November 1956. The legal alignment has remained unchanged ever since.

6.2 The Existing Footpath runs diagonally across a yard in which the applicant keeps farming materials and machinery. The landowner wishes to divert the public away from this yard, for safety reasons.

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

The proposal is to divert the full width of the section of Public Footpath BA2/33 commencing from grid reference ST 7836 6916 (point A on the Decision Plan) and proceeding in a generally north north-westerly direction for approximately 175 metres to a junction with Oakford Lane at grid reference ST 7831 6933 (point B 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 7836 6916 (point A on the Decision Plan) and proceeds in a generally north-westerly direction for approximately 154 metres to a field boundary at grid reference ST 7830 6931 (point D on the Decision Plan) and turns in a generally north-westerly direction for approximately 15 metres to a junction with Oakford Lane at grid reference ST 7829 6932 (point C on the Decision Plan). The width would be two metres between points A & D, and one metre between points D & C. This route is referred to as the "Proposed Footpath".

### **6.5 Limitations and Conditions**

No limitations or conditions are proposed. The Proposed Footpath crosses a field boundary (point D on the Decision Plan) and authorisation of a pedestrian gate is proposed at this boundary under section 147 of the Act, to prevent the ingress and egress of animals.

## **7. Consultations**

7.1 Affected landowners, Batheaston 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 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 Similarly the local Ramblers representative stated that he had no objections.
- 7.4 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 through a yard in which the applicant (also the landowner) keeps farming materials and machinery. With the Proposed Footpath walkers would instead follow an existing footpath through the adjacent field and thus be kept away from the machinery. The diversion of the footpath would therefore be expedient 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 the same public highway (Oakford Lane) which is 27 metres away from the end point of the Existing Footpath. Because these two footpaths connect in this way, the finish point of the Proposed Footpath is considered substantially as convenient to the public as the finish point of the Existing Footpath, and this test should therefore be 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 six metres shorter than the length of the existing route. This is considered an insignificant decrease and it therefore follows that the Proposed Footpath is not substantially less convenient to the public. 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 Proposed Footpath will run over terrain that is already walked and away from the yard that the Existing Footpath runs through. The effect on public enjoyment of the Proposed Footpath as a whole is therefore one of improvement, and this test should therefore be considered to have been met.
- 8.7 **Effect on other land served by the existing footpath and land affected by the proposed footpath:** The applicant's farm will benefit from the removal of the Existing Footpath from its yard and the Proposed Footpath will simply follow an existing path which is already walked. The proposed diversion will therefore not have an adverse effect either on land served by the Existing Footpath, or on land affected by the Proposed Footpath; 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:** In diverting the public away from the workings of the farm the Proposed Footpath would have a positive effect on farming, and on members of the public with visual disabilities. It would have a neutral effect on 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 on Oakford Lane approximately 27 metres away from where the Existing Footpath currently finishes. This will have a minimal effect on connectivity (see paragraph 8.3 above).
- 8.12 As the Proposed Footpath will keep walkers away from farming materials and machinery it will have a positive impact on those with visual impairments. The proposed diversion will have a neutral effect on those with other impairments.
- 8.13 It is intended to authorise a pedestrian gate at a field boundary under s147 of the Act to prevent the ingress and egress of animals. This is one gate less than the two gates that would be necessary on the Existing Footpath if its legal line was fully re-opened. Authorising the gate on the Proposed Footpath is therefore in keeping with the principles of 'Least Restrictive Access'.
- 8.14 There is a slight decrease in gradient on the Proposed Footpath compared with the Existing Footpath as the latter mounts a small embankment just prior to entering the farmyard (when walking northwards).

- 8.15 Maintenance of the Proposed Footpath will be similar to maintenance of the Existing Footpath.
- 8.16 Similarly the Proposed Footpath will improve walkers' safety, as they will no longer have to walk amongst farm machinery.
- 8.17 The Proposed Footpath will have a neutral impact on Status.
- 8.18 As regards width, the Proposed Footpath will have a very short section at its northern end (of approximately 15 metres in length) – where it will run between a wooded area and the landowner's yard – where its width will be one metre rather than the two metres which ordinarily, the Authority would require the width to be. Given the path's low level of use however, it is considered unlikely that a user would meet other walkers coming in the opposite direction along this short section. This is therefore considered a minor and non-detrimental reduction in width.
- 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**

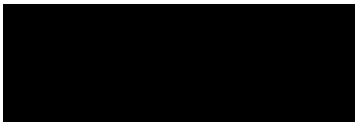
- 9.1 There are no significant risks associated with diverting the footpath.

## **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.
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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 a section of Public Footpath BA2/33 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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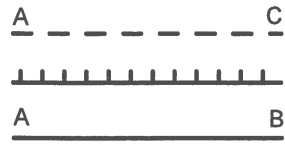
Dated: 16/01/20

Craig Jackson – Team Manager, Highways Maintenance and Drainage

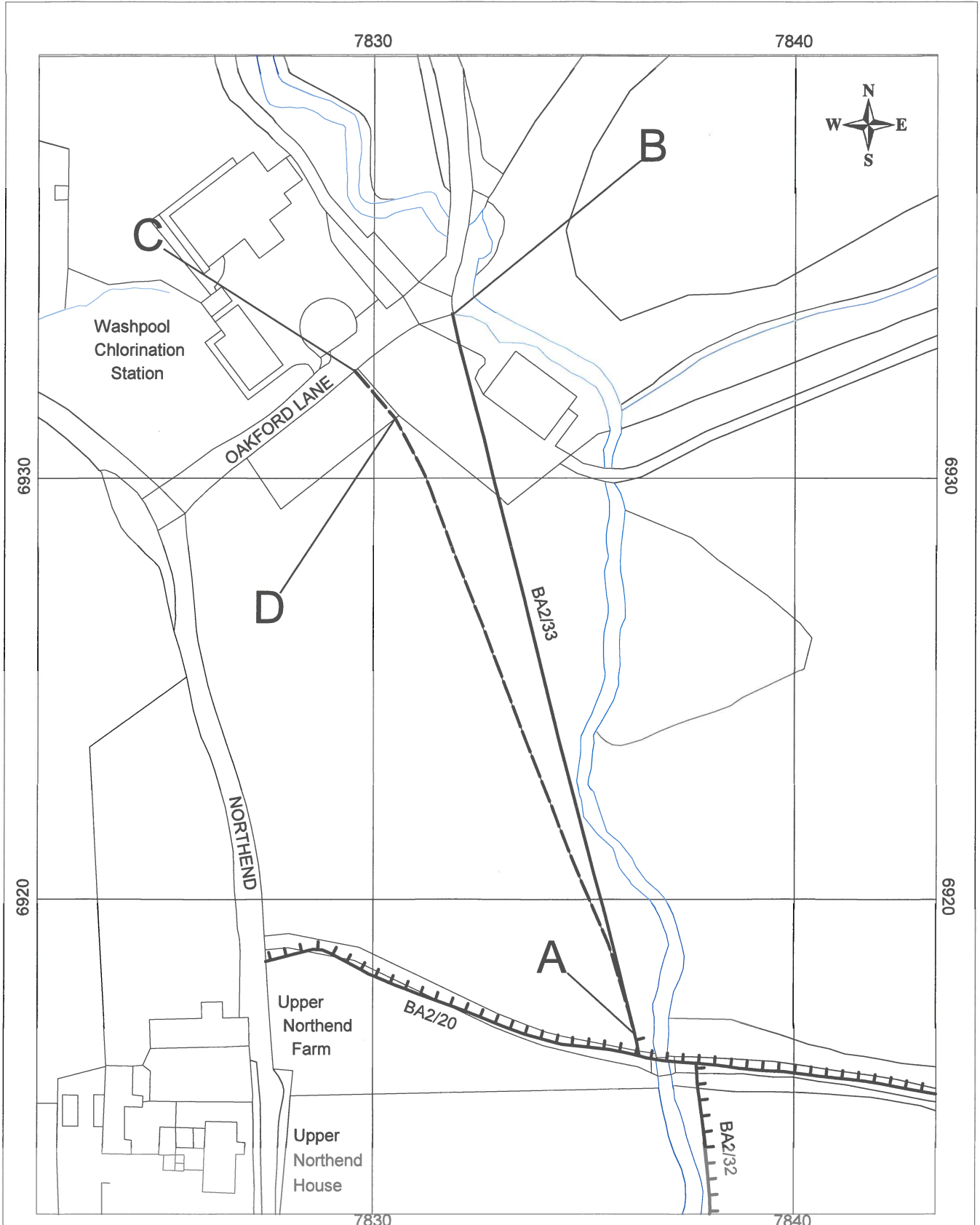


**Appendix 1 - Decision Plan  
Public Footpath BA2/33,  
Batheaston**

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



Scale: 1:1,250



## **APPENDIX 2 - DECISION SCHEDULE**

### **PART 1**

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

The full width of the section of Public Footpath BA2/33 commencing from grid reference ST 7836 6916 (point A on the Decision Plan) and proceeding in a generally north north-westerly direction for approximately 175 metres to a junction with Oakford Lane at grid reference ST 7831 6933 (point B on the Decision Plan).

### **PART 2**

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

A public footpath commencing from grid reference ST 7836 6916 (point A on the Decision Plan) and proceeding in a generally north-westerly direction for approximately 154 metres to a field boundary at grid reference ST 7830 6931 (point D on the Decision Plan) and turning in a generally north-westerly direction for approximately 15 metres to a junction with Oakford Lane at grid reference ST 7829 6932 (point C on the Decision Plan).

Width: 2 metres between grid references ST 7836 6916 (point A on the Decision Plan) and ST 7830 6931 (point D on the Decision Plan).

1 metre between grid references ST 7830 6931 (point D on the Decision Plan) and ST 7829 6932 (point C on the Decision Plan).

### **PART 3**

#### **LIMITATIONS AND CONDITIONS**

None.