

## **1. The Issue**

- 1.1 An application has been made to divert a section of Public Bridleway BA25/16 ("the Existing BR") at Upper Hayes, Wellow. The application has been made because the Authority and landowner became aware that the Existing BR has been enclosed by stiles and therefore used by pedestrians only. Pedestrians and horseriders currently use the proposed route ("the Proposed BR"). The landowner therefore wishes to divert the public bridleway to the route usually used by horseriders.

## **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 Bridleway BA25/16 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. Should an Order be made and confirmed, the Proposed Bridleway 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 (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 and
  - should consider any material provision of the Joint Rights of Way Improvement Plan.
- 5.5 The Authority must also give due regard to the effect the diversion will have on farming and forestry, biodiversity, members of the public with protected characteristics under the Equality Act 2010.

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 Bridleway (BR) BA25/16 is recorded on the Definitive Map and Statement which have a relevant date of 26<sup>th</sup> November 1956.

6.2 The Existing BR is currently used as a pedestrian footpath with stiles at both field boundaries. The public riding horses currently use the Proposed BR. Pedestrians also currently use the Proposed BR.

6.3 Consideration of horseriding in this report includes use of the paths by cyclists.

6.4 The applicant has entered into a dedication of highway agreement with Wellow Parish Council re-dedicating the existing BR as a public footpath, conditional upon the confirmation of the diversion of the BR.

### **6.5 Description of the Route to be Diverted**

The full width of the section of BR BA25/16 commencing from a point at grid reference ST 7285 5819 (point A on the Decision Plan) and proceeding in a generally westerly direction for approximately 370 metres to a junction with Byway Open to All Traffic ("BOAT") BA25/38 at grid reference ST 7248 5824 (point B) (referred to as "Existing BR").

### **6.5 Description of the Proposed Bridleway**

A section of Public Bridleway commencing from grid reference ST 7285 5819 (point A) and continuing in a generally north westerly direction for approximately 185 metres to a junction with BOAT BA25/38 at grid reference ST 7274 5834 (point C). Width to be 3 metres between grid reference ST 7285 5819 (point A) and grid reference ST 7274 5834 (point C) (referred to as "Proposed BR").

- 6.6 **Limitations and Conditions** - The Proposed BR will be diverted without any limitations or conditions. The Proposed BR will cross a field boundary and authorisation of a bridle gate at point C is proposed under section 147 of the Act to prevent the ingress and egress of animals.

## **7. Consultations**

- 7.1 Affected landowners, Wellow Parish Council, national and local user groups, the Ward Councillors and statutory undertakers were all consulted about the proposed diversion for a period of six weeks ("the Consultation Period"). Additionally site notices were erected at either end of the section of the Existing BR to be diverted and at either end of the Proposed BR 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 A total of 5 individuals, a mix of pedestrians and horseriders, commented during the Consultation Period. The objectors were concerned that the Proposed BR was not as suitable for pedestrians as the Existing BR route.
- 7.4 The B&NES area Ramblers representative also commented regarding the suitability of the Proposed BR for pedestrians.
- 7.5 The Access and Bridleways Officer for the British Horse Society had no objection but commented on unaffected sections of the bridleway. These were addressed separately. The Officer was concerned regarding barbed wire on the field boundary adjacent to the Proposed BR. Reassurance was made that the Proposed BR is not enclosed or up close to the boundary fence, and the barbed wire is not fixed to the fence posts on the side closest to the Proposed BR which the Authority consider is acceptable.
- 7.6 Further discussion took place with the applicant and then further consultation took place with interested parties. A permissive path in place of the Existing BR was suggested but the objectors did not feel this was acceptable. The applicant therefore agreed to enter into a dedication of highway agreement with Wellow Parish Council, dedicating the route of the Existing BR as a public footpath, conditional upon the confirmation of the diversion of the Existing BR. This was acceptable to all interested parties and has subsequently been signed by the applicant and Wellow Parish Council.
- 7.7 This decision is therefore made on the understanding that there are no sustained objections to the proposed diversion.

## **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 diversion is proposed in the interest of the landowner in order to align the recorded bridleway with the route actually used as a bridleway by the public. The public riding horses adjacent to the boundary fence rather than diagonally across a field is beneficial for farming purposes. 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 Existing and Proposed BRs start at the same point on BR25/16 and both finish at junctions on BOAT BA25/38. The junction of the Proposed BR is considered substantially as convenient to the public, taking into account users that may be heading in different directions at the junction with BA25/38. This part of the 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.
- 8.5 The Proposed BR follows a slightly steeper route but for a shorter length. If the user is heading in a southwesterly direction, the shorter length is negated by the need to walk for a longer but flatter length of BA25/38. If the user is heading in a northeasterly direction the overall distance will be shorter. The junction of the Proposed BR is closer to FP25/13 which may be advantageous if the pedestrian is going this way. The alteration to the length of bridleway and steeper route should not affect the horserider. The purpose for the Existing BR is presumed to be mainly for leisure walking and riding. The nature of the Proposed BR within the wider rights of way network is such as would be expected by a rights of way user. This part of the test should therefore be considered to have been met.
- 8.6 **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.**
- 8.7 **Public enjoyment of the Paths:** The Existing and Proposed BRs run over similar topography although a short section of the surface of the Proposed BR is to be improved before a diversion can take place.

There are extended views from the Proposed BR not visible from the Existing BR; this test should therefore be considered to have been met.

- 8.8 **Effect on other land served by the existing footpath and land affected by the proposed path:** The Proposed BR does not have an adverse effect on other land served by the Existing BR or on land affected by the Proposed BR; this test should therefore be considered to have been met.
- 8.9 **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 BR with regard to compensation as the land affected by the Existing and Proposed BRs are both owned by the Applicant; this test is therefore considered to have been met.
- 8.10 **The Authority must have regard to the contents of the Rights of Way Improvement Plan.**
- 8.11 The proposal will contribute towards the Authority achieving the following actions which are identified in the Rights of Way Improvement Plan's Statement of Actions including:
- Action 4.3 - *"Identify and carry out improvements for people with mobility difficulties and visual impairments"* (i.e. better connectivity with FP BA25/13 and use of less field boundary gates)
  - Action 4.4 - *"Identify road safety improvements that enable increased use of routes"* (i.e. improving the surface where it may be degraded through use by horses)
  - Action 4.6 - *"Identify gaps in the wider recreational network that will improve accessibility and connectivity"* (i.e. improved connectivity with FP BA25/13)
- 8.12 **The Authority must give due regard to the effect the diversion will have on farming and forestry, biodiversity and members of the public with protected characteristics.**
- 8.13 The Existing BR runs diagonally across a field and the Proposed BR runs adjacent to the field boundary which is beneficial to farming purposes. The diversion will have no effect on forestry or biodiversity as the route is already used by pedestrians and horseriders. Path users with mobility and sight impairments will benefit from one less gate on the Proposed BR but may find the steepness of the bank less commodious to use. The Proposed BR will have an improved surface in part and an authorised bridle gate.
- 8.14 **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.**

- 8.15 Connectivity is improved with FP BA25/13. There is no impact on the connectivity with BOAT BA25/38.
- 8.16 Path users with mobility and sight impairments will benefit from one less gate on the route but may find the steepness of Proposed BR less commodious to use. The Proposed BR will have an improved surface in part which will benefit all users.
- 8.17 The Proposed BR will have one bridle gate authorised for stock control purposes which is one less gate than the Existing BR. Authorising the gate is in keeping with the principles of 'Least Restrictive Access'.
- 8.18 The Proposed BR is steeper than the Existing BR. However, the Proposed BR has previously been used by the public and no adverse safety effects have been documented.
- 8.19 Maintenance of the Proposed BR will be comparable with the Existing BR.
- 8.20 The Proposed BR does not have any impact on width or status.
- 8.21 The Proposed BR has improved views over the Existing BR thus adding a feature of interest.
- 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 proposals are part of the ongoing management of the network and therefore contribute towards helping to tackle the Climate Emergency.

## **10. Risk Management**

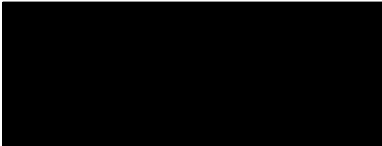
- 10.1 There are no significant risks associated with diverting the BR.

## **11. Conclusion**

- 11.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposals are in compliance with the Public Path Order Policy.
- 11.2 The diversion Order would be in the interests of the landowner.
- 11.3 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 Bridleway BA25/16 as shown on the Decision Plan and detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



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Dated: 31/07/19.....

Craig Jackson

Team Manager - Highways Maintenance and Drainage

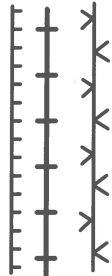


# Appendix 1 The Decision Plan

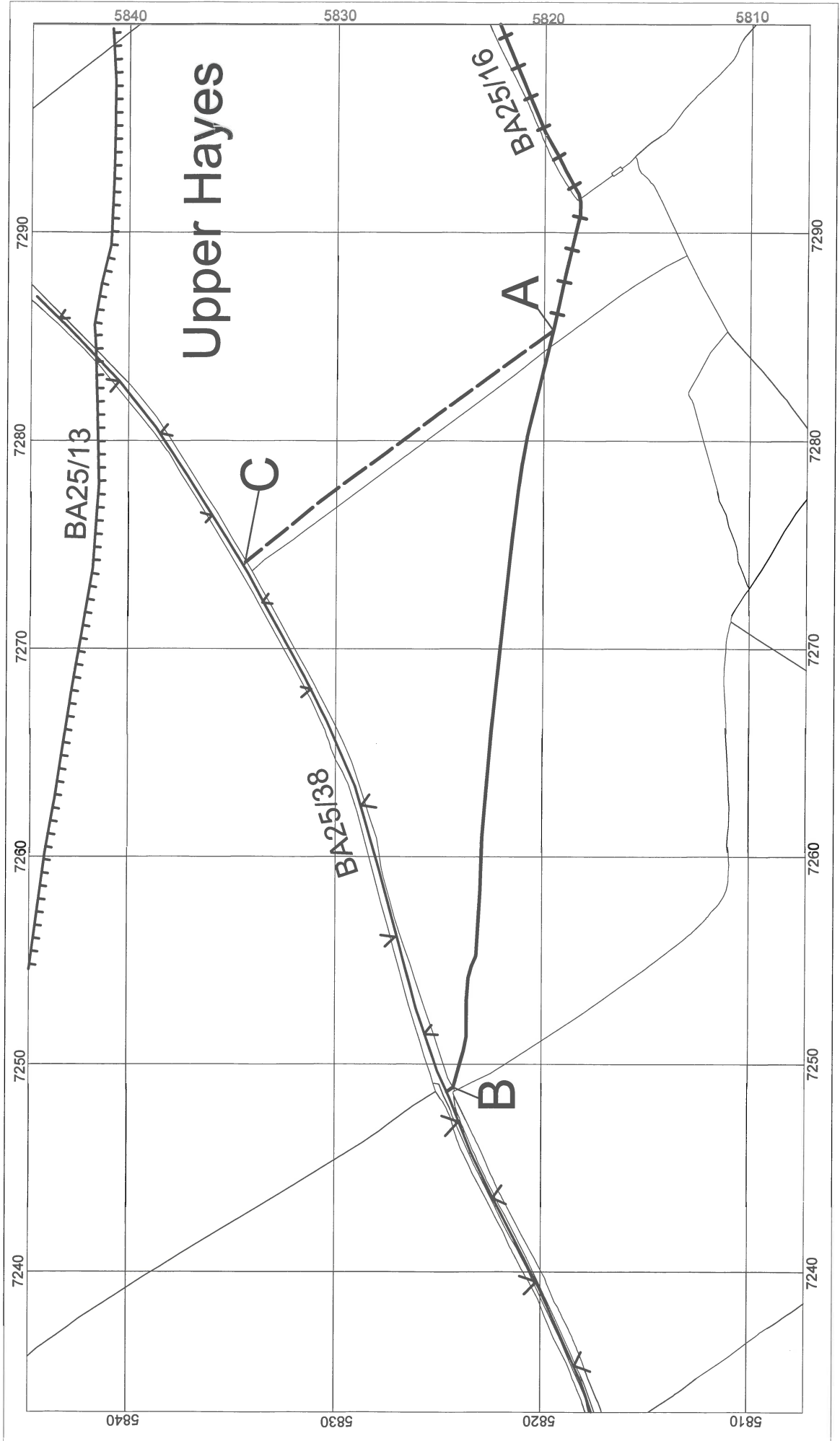
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- Unaffected public footpath
- Unaffected public bridleway
- Unaffected byway open to all traffic



- Public bridleway to be created A
- Public bridleway to be stopped up and dedicated as a Public Footpath A B





## **DECISION SCHEDULE**

### **PART 1**

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

The full width of a section of Public Bridleway BA25/16 commencing from grid reference ST 7285 5819 (point A on the Decision Plan) and proceeding in a generally westerly direction for approximately 370 metres to a junction with Byway Open to All Traffic BA25/38 at grid reference ST 7248 5824 (point B).

### **PART 2**

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

A section of public bridleway commencing from grid reference ST 7285 5819 (point A) and proceeding in a generally northwesterly direction for approximately 185 metres to grid reference ST 7274 5834 (point C).

Width: 3 metres between grid reference ST 7285 5819 (point A) and grid reference ST 7274 5834 (point C).

### **PART 3**

#### **LIMITATIONS AND CONDITIONS**

None.

