

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATHS
BA25/13 and BA25/14 AT WEAVERS FARM
LODGE, BATH HILL, WELLOW**

1. The Issue

- 1.1 An application has been made to divert sections of Public Footpath BA25/13 and Public Footpath BA25/14 at Weavers Farm Lodge, Bath Hill in Wellow to divert the footpaths away from farm buildings and the farmhouse into the surrounding fields on routes which the public have walked for a number of years. The proposal aligns the definitive line with what is currently walked.

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 sections of Public Footpath BA25/13 and Public Footpath BA25/14 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. No works are required to the surface to raise the new routes to an acceptable standard for use by the public. The Applicant has agreed to remove stiles and install pedestrian gates on the new routes where necessary for stock control purposes. Should an Order be made and confirmed, the Proposed Footpaths 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.
- 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 BA25/13 is recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956. The legal alignment has remained unchanged ever since.

6.2 Public Footpath BA25/14 is also recorded on the Definitive Map and Statement but Definitive Map and Statement were amended at the western end of the footpath by a definitive map modification order in 2003. The legal alignment of the section under consideration has remained unchanged up to now.

6.3 The Existing Footpaths are shown on the definitive map as running over land now occupied by farm outbuildings vital to the farm business and the surrounding farmhouse grounds. These longstanding obstructions date back to development made before the current ownership. An application has been made by the landowner to divert the Existing Footpaths away from the buildings and grounds to alternative routes previously constructed which have been used by the public for a number of years. The Proposed Footpaths will align the legal line of the routes with the routes currently walked.

6.4 Description of the Existing Footpaths

The full width of a section of Public Footpath BA25/13 commencing from a junction with Public Footpath BA25/14 at grid reference ST 7386 5837 (point B on the Decision Plan) and proceeding in a generally westerly direction for approximately 50 metres to grid reference ST 7381 5838 (point D). This route is referred to as "Existing Footpath 1".

6.5 The full width of a section of Public Footpath BA25/14 commencing from grid reference ST 7386 5838 (point A on the Decision Plan) and proceeding in a generally southerly direction for approximately 6 metres to a junction with Public Footpath BA25/13 at grid reference ST 7386 5837 (point B) and continuing in a generally south-southwesterly direction for approximately 125 metres to grid reference ST 7382 5826 (point C). This route is referred to as "Existing Footpath 2".

6.6 These routes are referred to collectively as “the Existing Footpaths”.

6.7 Description of the Proposed Footpath

A section of public footpath commencing from a new junction with Public Footpath BA25/14 at grid reference ST 7385 5838 (point G) and proceeding in a generally westerly direction for approximately 35 metres to grid reference ST 7381 5838 (point D). The width will be 2 metres throughout. This route is referred to as “Proposed Footpath 1”.

6.8 A section of public footpath commencing from grid reference ST 7386 5838 (point A) and proceeding in a generally southwesterly direction for approximately 5 metres to grid reference ST 7386 5838 (point E) and turning in a generally west-northwesterly direction for approximately 12 metres to a new junction with Public Footpath BA25/14 at grid reference ST 7385 5838 (point G) and turning in a generally south-southwesterly direction for approximately 22 metres to grid reference ST 7384 5836 (point J) and turning in a generally southerly direction for approximately 93 metres to grid reference ST 7383 5828 (point P) and turning in a generally south-southwesterly direction for approximately 22 metres to grid reference ST 7382 5826 (point R) and turning in a generally south-southeasterly direction for approximately 3 metres to grid reference ST 7382 5826 (point C). The width will be 2 metres between point A and point G; 1.3 metres between point G and point J and 2 metres between point J and point C. This route is referred to as “Proposed Footpath 2”.

6.9 These routes are referred to collectively as “the Proposed Footpaths”.

6.10 Limitations and Conditions

No limitations or conditions are proposed. The Proposed Footpaths run through fields used for farming purposes and authorisation of gates is proposed at points E, F, H, K, M, N and R under section 147 of the Act, to prevent the ingress and egress of animals.

7. Consultations

7.1 Affected landowners, the adjoining Village Hall, Wellow Parish Council, national and local user groups, the Ward Councillor and statutory consultees were all consulted about the proposed diversion for a period of six weeks (“the Consultation Period”). Additionally site notices were erected at each end of the proposed diversions 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. Bristol Water advised they had apparatus running across the proposed route but as there were no plans to excavate on the route the proposal was acceptable to them.

7.3 Wellow Parish Councillors wished to include an additional change to Existing Footpath 2 but this is further south west to the current proposal and this part of the footpath is not under the same land

ownership. This additional change has not been agreed with the respective landowner and so may be pursued separately by Wellow Parish Council. The Parish Council did not comment as a Council but individual responses stated they were pleased that the proposal will regularise the routes currently used by the public.

- 7.4 The local Ramblers representative stated that he had no objections to the proposal as the new route follows what is already walked.
- 7.5 No other comments were received in relation to these 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 definitive lines of the Existing Footpaths currently run through farm outbuildings, surrounding farmhouse grounds and fencing. Alternative routes have been set out which now form the basis of the proposed diversion. The public have not walked the definitive lines for a considerable time. The landowner has applied to divert the Existing Footpaths so that they run outside the vicinity of the farmhouse and outbuildings in order to improve privacy and align the legal route with what is currently walked. 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:** Existing Footpath 1 starts from a junction with Existing Footpath 2. Proposed Footpath 1 also starts from a junction with Proposed Footpath 2. Existing Footpath 2 and Proposed Footpath 2 start and finish at the same points on Existing Footpath 2; 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 distance from point A to point D via Existing Footpaths is 58 metres. The distance from point A to point D via Proposed Footpaths is 52 metres. The distance from point A to point C via Existing Footpaths is 131 metres. The distance from point A to point C via Proposed Footpaths is 162 metres. The difference in overall distances between Existing and Proposed Footpaths is therefore minimal. The terrain of the Proposed Footpaths is of comparable difficulty to walk as the Existing Footpaths. The proposed changes remove the walker from the vicinity of farm buildings so that the walker

will traverse fields and do not affect the footpaths' starting and finishing points. The Proposed Footpaths are therefore considered not to be 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 Footpaths cross fields instead of running through farm buildings. The more open aspect of the Proposed Footpaths provides better conditions for walking and improved views over more open land. The nature of the footpaths mean it is likely that the public are walking for pleasure; public enjoyment of the Proposed Footpaths as a whole may therefore be improved. 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 proposed diversion will not have an adverse effect on either land served by the Existing Footpaths or land affected by the Proposed Footpaths; 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 Footpaths with regard to compensation as the Existing and Proposed Footpaths are all owned by the Applicant; this test should therefore be considered to have been met.
- 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:** The proposal is intended to improve the management of the farm, as the routes will be directed away from the vicinity of the farm outbuildings. The Proposed Footpaths will have a neutral effect on forestry and biodiversity. Path users with mobility and visual impairments may benefit from the more open aspect of the Proposed Footpaths and not having to negotiate farm buildings and machinery; this test should therefore be considered to have been met.
- 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 Footpaths will have no adverse effect on connectivity as the walker will start and finish at the same point on the Existing Footpaths.

- 8.12 Path users with mobility and visual impairments may benefit from the more open aspect of the Proposed Footpaths and from not having to negotiate farm buildings and machinery. The proposal will therefore have a positive impact on those with mobility and visual impairments. The proposed diversion has a neutral effect on those with other impairments.
- 8.13 The Existing and Proposed Footpaths all cross field boundaries where livestock are kept. It is intended to authorise gates under s147 of the Act at points E, F, H, K, M, N and R to prevent the ingress and egress of animals. Authorisation of the gates is in keeping with the principles of 'Least Restrictive Access'.
- 8.14 The width of the Proposed Footpaths is to be 2 metres wide except for a short stretch which is limited to 1.3 metres wide because of utility poles. The Definitive Statement is silent on the width of the Existing Footpaths; however, it is assumed that the Proposed Footpath widths are not a significant reduction on the Existing Footpath widths.
- 8.15 The Proposed Footpaths provide a more open aspect and therefore improved views over open land.
- 8.16 The Proposed Footpaths have a neutral impact on Safety, Gradients, Maintenance and Status.
- 8.17 It is considered that on balance the proposed diversions are 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 10 May 2018, the Place Law Manager is hereby requested to seal an Order to divert a section of Public Footpath BA25/13 and a section of Public Footpath BA25/14 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



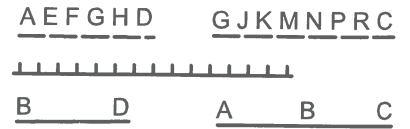
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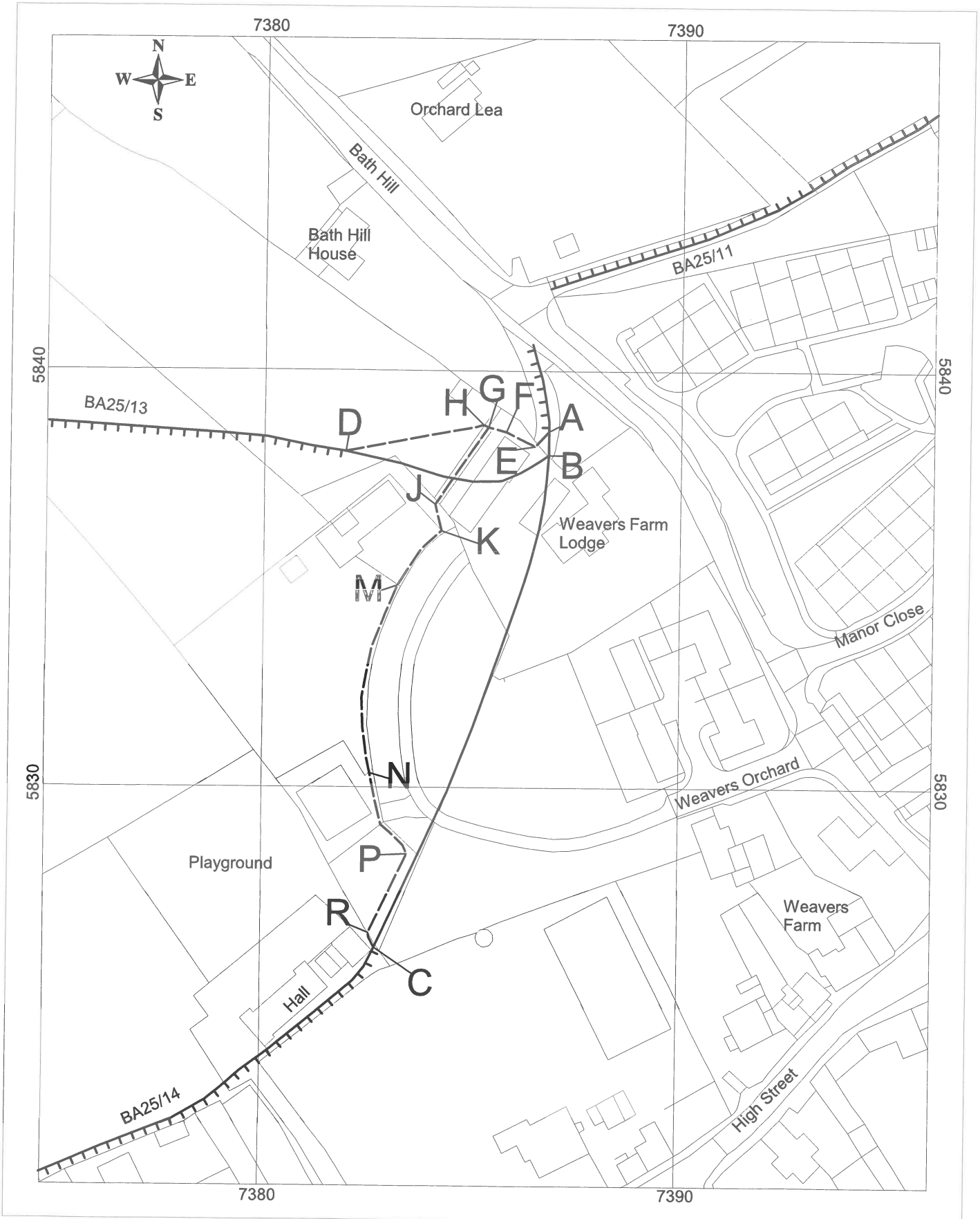
Craig Jackson – Team Manager, Highways Maintenance and Drainage

**Appendix 1 Decision Plan
BA25/13, BA25/14
Weavers Farm Lodge, Wellow**

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



Scale: 1:1250



DECISION SCHEDULE

Part 1

DESCRIPTION OF SITE OF EXISTING PATH

The full width of a section of Public Footpath BA25/13 commencing from a junction with Public Footpath BA25/14 at grid reference ST 7386 5837 (point B on the Decision Plan) and proceeding in a generally westerly direction for approximately 50 metres to grid reference ST 7381 5838 (point D).

The full width of a section of Public Footpath BA25/14 commencing from grid reference ST 7386 5838 (point A) and proceeding in a generally southerly direction for approximately 6 metres to a junction with Public Footpath BA25/13 at grid reference ST 7386 5837 (point B) and continuing in a generally southwesterly direction for approximately 125 metres to grid reference ST 7382 5826 (point C).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from a new junction with public footpath BA25/14 at grid reference ST 7385 5838 (point G) and proceeding in a generally westerly direction for approximately 35 metres to grid reference ST 7381 5838 (point D).

Width: 2 metres between grid reference ST 7385 5838 (point G) and grid reference ST 7381 5838 (point D).

A section of public footpath commencing from grid reference ST 7386 5838 (point A) and proceeding in a generally southwesterly direction for approximately 5 metres to grid reference ST 7386 5838 (point E) and turning in a generally westerly direction for approximately 12 metres to a new junction with Public Footpath BA25/14 at grid reference ST 7385 5838 (point G) and turning in a generally southwesterly direction for approximately 22 metres to grid reference ST 7384 5836 (point J) and turning in a generally southerly direction for approximately 93 metres to grid reference ST 7383 5828 (point P) and turning in a generally southwesterly direction for approximately 22 metres to grid reference ST 7382 5826 (point R) and turning in a generally southeasterly direction for approximately 3 metres to grid reference ST 7382 5826 (point C).

Width: 2 metres between grid reference ST 7386 5838 (point A) and grid reference ST 7385 5838 (point G)

1.3 metres between grid reference ST 7385 5838 (point G) and grid reference ST 7384 5836 (point J)

2 metres between grid reference ST 7384 5836 (point J) and grid reference ST 7382 5826 (point C).

PART 3

LIMITATIONS AND CONDITIONS

None.

