

**PROPOSAL FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH BC43/22
IN THE CITY OF BATH**

1. The Issue

- 1.1 A proposal has been made to divert a section of Public Footpath BC43/22 in the City of Bath to move this section of the path away from its historic line, onto the line which the public actually walk.

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 BC43/22 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 Authority will cover the cost of processing the Order as this mitigates the costs which the Authority would otherwise incur in removing trees and vegetation to meet its statutory duties to maintain the existing line of the footpath. 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. 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 proposal 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 proposal 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 a proposal 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 proposal 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

6.1 Public Footpath BC43/22 was added to the Definitive Map and Statement by the City of Bath Definitive Map and Statement Modification Order (No.21 – Widcombe & Lyncombe, Combe Down and Oldfield Park) 2024 which took effect on 6 March 2025. The legal alignment has remained unchanged ever since.

6.2 The Existing Footpath runs through a significant number of mature trees and other vegetation. The Proposed Footpath is the line of the footpath which it is believed the public have walked for a considerable period of time.

6.3 Description of the Existing Footpath

The proposal is to divert the full width of the section of Public Footpath BC43/22 commencing from grid reference ST 7495 6313 (point A on the Decision Plan) and proceeding in a generally east-south-easterly direction for approximately 399 metres to grid reference ST 7531 6297 (point B on the Decision Plan), which 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 7495 6313 (point A on the Decision Plan) and proceeds in a generally south-south-easterly direction for approximately 14 metres to grid reference ST 7496 6312 (point C on the Decision Plan) and then in a generally easterly direction for approximately 138 metres to grid reference ST 7510 6311 (point D on the Decision Plan) and then in a generally south-easterly direction for approximately 76 metres to grid reference ST 7514 6305 (point E on the Decision Plan) and then in a generally east-south-easterly direction for approximately 188 metres to grid reference ST 7531 6297 (point B on the Decision Plan). The width would be two metres throughout. This route is referred to as the “Proposed Footpath”.

6.5 Limitations and Conditions

No limitations or conditions are proposed.

7. Consultations

- 7.1 As the Proposed Diversion is considered to be in the interests of both the landowners and the public, no informal consultation has been carried out prior to deciding to make an order.

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:** Diverting onto the Proposed Footpath will avoid the need for extensive clearance work (which would include the removal of a significant number of mature trees). As the public purse would need to pick up the substantial cost of such work, it follows that diverting the path is in the interests of the public. This first test is therefore 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, 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 17 metres longer than the length of the existing route which is considered an insignificant increase in the context of whole walks which people will undertake within the wider public rights of way network. There will no change in the difficulty of the walking as a result of the diversion. It therefore follows that the Proposed Footpath is not substantially less convenient to the public and this third 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 is the walked route which appears to have been preferred by the public to the Existing Footpath, for a considerable period of time. This suggests that a permanent diversion will have an ongoing positive effect on public enjoyment of the Path.

- 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 either on land served by the Existing Footpath, or on land affected by the Proposed Footpath. Consequently, this test should 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, taking into account the provision for compensation, as it crosses the same two plots of land as the Existing Footpath.
- 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 protected characteristics:** As the land crossed by the Proposed Footpath is not used for agriculture there will be no effect on farming. There will be a positive effect on forestry and biodiversity as diverting onto the Proposed Footpath will avoid the need for the extensive vegetation clearance that would be necessary if the Existing Footpath were to remain (see paragraph 8.2 above). There will be no effect on members of the public with protected characteristics.
- 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 As the Proposed and Existing Footpaths will have the same start and finish points, there will be no effect on connectivity.
- 8.12 There will be no effect on members of the public with protected characteristics.
- 8.13 The diversion will not change the number of gaps or gates on the Path.
- 8.14 There is no difference in gradient between the Proposed and Existing Footpaths.
- 8.15 It is considered that the Proposed Footpath will require less maintenance than the Existing Footpath, due to the fact that it is already very well-trodden and is unlikely to require very much, if any, seasonal vegetation clearance work, compared with the Existing Footpath.
- 8.16 There will be a neutral impact on safety.
- 8.17 There will be no change to the status of the route.
- 8.18 The Existing Footpath is considered 1.8 metres wide. The Proposed Footpath will be two metres wide.

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. 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 is considered that the relevant statutory tests for making a Diversion Order under Section 119 of the Act 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 public.

11.3 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 BC43/22 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.



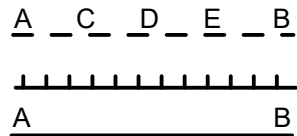
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Dated: 29/04/2026

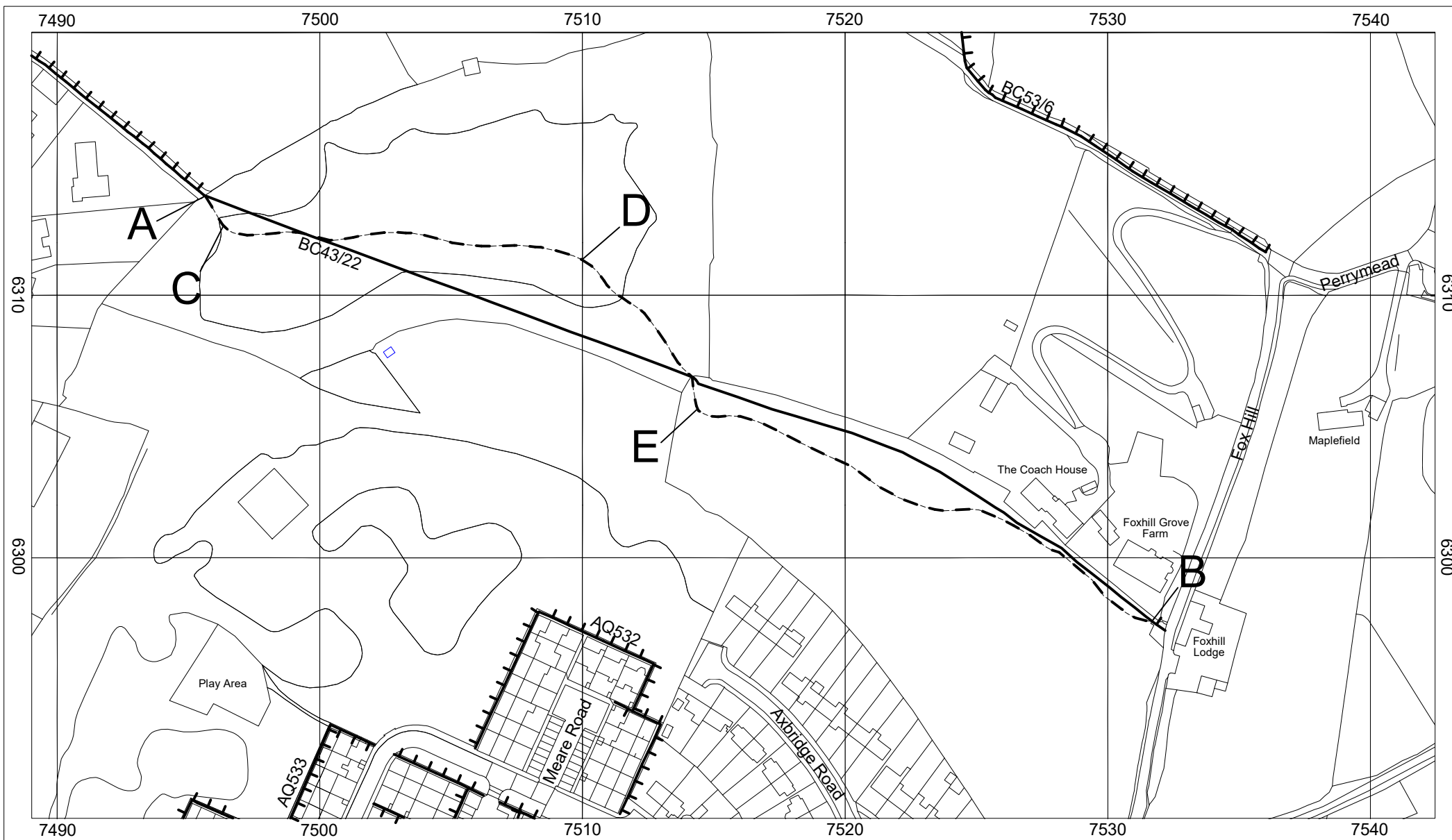
Graeme Stark – Principal Officer: Public Rights of Way

**Appendix 1 - Decision Plan
Public Footpath BC43/22,
Fox Hill, Bath**

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



Scale 1:2000



APPENDIX 2 - DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of Public Footpath BC43/22 commencing from grid reference ST 7495 6313 (point A on the Decision Plan) and proceeding in a generally east-south-easterly direction for approximately 399 metres to grid reference ST 7531 6297 (point B on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from grid reference ST 7495 6313 (point A on the Decision Plan) and proceeding a generally south-south-easterly direction for approximately 14 metres to grid reference ST 7496 6312 (point C on the Decision Plan) and then in a generally easterly direction for approximately 138 metres to grid reference ST 7510 6311 (point D on the Decision Plan) and then in a generally south-easterly direction for approximately 76 metres to grid reference ST 7514 6305 (point E on the Decision Plan) and then in a generally east-south-easterly direction for approximately 188 metres to grid reference ST 7531 6297 (point B on the Decision Plan).

Width: 2 metres between grid references ST 7495 6313 (point A on the Decision Plan) and ST 7531 6297 (point B on the Decision Plan).

PART 3

LIMITATIONS AND CONDITIONS

None.