

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH CL10/20 IN
FARRINGTON GURNEY**

1. The Issue

- 1.1 An application has been made to divert a section of Public Footpath CL10/20 in Farrington Gurney to move that section of the footpath off of the land over which the applicants wish to extend their garden.

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 CL10/20 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 CL10/20 is recorded on the Definitive Map and Statement which has a relevant date of 26 November 1956. The eastern end of the footpath originally terminated on the A37 main road but was subsequently diverted under the Bath and North East Somerset District Council (Former Clutton Rural District Area) (No 2) Definitive Map and Statement Modification Order 1998 – relevant date 30th November 1998, to change this termination point to Pitway Lane.

6.2 The Existing Footpath runs over a short grassy section of land before crossing a gravelled access track and then running immediately adjacent to the current fenced boundary of the applicants' home along a narrow strip of land (currently paved for the most part) before emerging onto Pitway Lane. The applicants have recently purchased this strip of land and wish to move their boundary fence to enlarge their garden. They are seeking to move this section of the footpath off of their land and onto the adjacent access track, so that no part of the path runs through their extended garden.

6.3 Description of the Existing Footpath

The proposal is to divert the full width of the section of Public Footpath CL10/20 commencing from grid reference ST 6281 5553 (point A on the Decision Plan) and proceeding in a generally northerly direction for approximately 66 metres to grid reference ST 6282 5560 (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 6281 5553 (point A on the Decision Plan) and proceeds in a generally northerly direction for approximately 68 metres to grid reference ST 6281 5560 (point C on the Decision Plan). The width would be two metres between points A & C. 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 landowners, Farrington Gurney 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. The owner of the land over which the Proposed Footpath runs consented to the proposals prior to the submission of the application.

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 applicants (also now the landowners) wish to fence around to expand the garden of their home. The Proposed Footpath walkers would divert walkers around their expanded garden, along the gravelled access track which would run parallel to it. 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 Pitway Lane a mere eight metres away from the point where the Existing Footpath currently meets that road. 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 two metres longer than the length of the existing route which is considered a negligible increase, given the predominant leisure use of the footpath. Furthermore, the section of the Existing Footpath from the point immediately north of where it crosses the access track, to the point

where it meets Pitway Lane is currently very narrow – scarcely more than a metre wide along much of its length. In contrast, the Proposed Footpath would be two metres along its entire length. There would be no change in the difficulty of the walking. 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:** As highlighted in paragraph 8.4 above, the section of the Existing Footpath from the point immediately north of where it crosses the access track, to the point where it meets Pitway Lane is currently very narrow – scarcely more than a metre wide along much of its length. In contrast, the section of the Proposed Footpath which would replace this section would be two metres wide, with a proportion of the access track extending either side of this, creating a more open field. It is considered that such a change will make the experience of walking this 33 metres of footpath more enjoyable for members of the public.
- 8.7 **Effect on other land served by the existing footpath and land affected by the proposed footpath:** The applicants' land will benefit from the removal of the Existing Footpath as this will facilitate the extension of their garden. Similarly, the Proposed Footpath will not have an adverse effect on the land across which it will run, as a suitable surfaced track is already in place and the affected landowner has consented to the proposals, suggesting that they have no other plans for the relevant strip of land which would be adversely affected by the footpath being diverted onto it. 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:** The owners of the land crossed by the Proposed Footpath have consented to the diversion proposals and have not expressed any intention to claim compensation. In the event that they should subsequently express a desire to do so, they would need to show either that the value of their land had depreciated as a consequence of the diversion, or that the enjoyment of their land had been disturbed. It is not believed that the Proposed Footpath will have either of these effects on the relevant land.
- 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:** There will be a neutral effect on farming and forestry, as none of the affected land is agricultural or wooded. The effect on biodiversity will potentially be positive, in so far as the diversion will enable the applicant to extend their garden. As regards

any effect on members of the public with disabilities, the Existing and Proposed Footpaths will follow the same gradients. A further 33 metres of footpath will be diverted onto the vehicular access track leading to rear of four residential properties; however, the vehicular use of this track is anticipated to be so infrequent, with sufficient visibility and enforced low speeds (see paragraph 8.16 below), for this to not pose a hazard to persons with visual or hearing impairments (or indeed any other disability).

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 Pitway Lane a mere 8 metres away from the point where the Existing Footpath currently meets that public road. This will only have a very negligible effect on connectivity.

8.12 The proposed diversion will have a neutral effect on people with disabilities (see paragraph 8.9 above).

8.13 The proposals will make no change to the number of gaps and gates on the public footpath so again, the effect on this aspect of the Policy will be neutral.

8.14 There is no difference in gradient between the Existing and Proposed Footpaths.

8.15 Similarly there will be no change in maintenance burden between the Existing and Proposed Footpaths.

8.16 The Proposed Footpath will run along a vehicular track for 33 metres more than the Existing Footpath. However due to the very limited scope of the vehicles that will use this track (essentially only those wishing to access the rear of the four properties to which it leads), the favourable visibility along it and the very low speeds that will be enforced by its short distance and shape, the safety impact is considered neutral.

8.17 The Proposed Footpath will also have a neutral impact on Status.

8.18 The Proposed Footpath will be two metres wide along its entire length whereas the northernmost 33 metres of the Existing Footpath is scarcely more than a metre wide along much of its length (see paragraph 8.4 above). There will therefore be a positive impact on 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.

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 CL10/20 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:11/12/2023

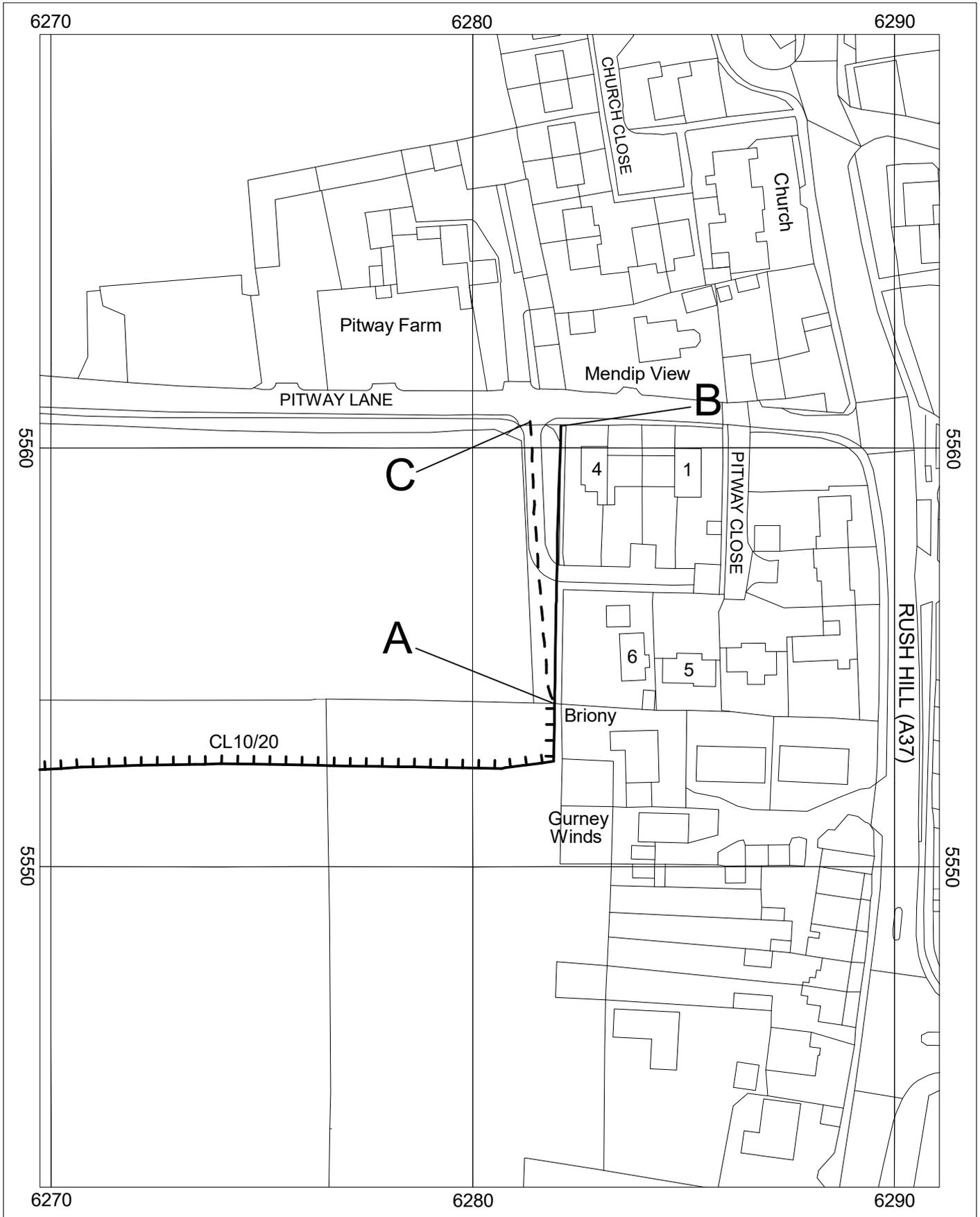
Craig Jackson – Team Manager, Highways Maintenance and Drainage

Appendix 1 - Decision Plan
Public Footpath CL10/20,
Pitway Lane,
Farrington Gurney

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



Scale 1:1250



APPENDIX 2 - DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of the section of Public Footpath CL10/20 commencing from grid reference ST 6281 5553 (point A on the Decision Plan) proceeding in a generally northerly direction for approximately 66 metres to grid reference ST 6282 5560 (point B on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from grid reference ST 6281 5553 (point A on the Decision Plan) and proceeding in a generally northerly direction for approximately 68 metres to grid reference ST 6281 5560 (point C on the Decision Plan).

Width: 2 metres between grid references ST 6281 5553 (point A on the Decision Plan) and ST 6281 5560 (point C on the Decision Plan).

PART 3

LIMITATIONS AND CONDITIONS

None.