

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING FP BA20/1, PRISTON HILL,
PRISTON**

1. The Issue

- 1.1 A diversion of Public Footpath (FP) BA20/1, Priston, was certified by the petty sessional division of Keynsham in 1956 but inadvertently was not recorded by the Authority. This route was made approximately on the boundary of a water treatment works. When this was investigated, it transpired that the diversion route was impractical because it was still inside the hedged boundary of the water treatment works. Bath and North East Somerset Council therefore consulted with the landowners and a revised route was proposed, taking the footpath further away from the water treatment works and along what is currently a permissive route which the public are used to walking. The landowners are supportive of the proposed route as it is beneficial for land management purposes.

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 FP BA20/1 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 Bath and North East Somerset Council has agreed to pay the cost of processing an Order and the cost of any required notices in a local newspaper as the order made in 1954 and certified in 1956 has never been practical to implement. 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 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 FP BA20/1 is recorded on the Definitive Map and Statement which have a relevant date of 26th November 1956. A diversion of FP BA20/1, Priston, was certified by the petty sessional division of Keynsham on 12th December 1956 but inadvertently was not recorded by the Authority. The diversion is still inside the boundary of the water treatment works and therefore requires further diversion to be useable by the public, onto the permissive route already in use by the public.
- 6.2 **Description of the Route to be Diverted**
The full width of a section of FP BA20/1 commencing from grid reference ST 6979 6063 (point A on the Decision Plan) and proceeding in a generally north northeasterly direction for approximately 6 metres to grid reference ST 6979 6064 (point B on the Decision Plan) and turning in a generally west northwesterly direction for approximately 9 metres to grid reference ST 6979 6064 (point C on the Decision Plan) and turning in a generally north northeasterly direction for approximately 62 metres to grid reference ST 6981 6070 (point D on the Decision Plan) and turning in a generally easterly direction for approximately 6 metres to grid reference ST 6982 6070 (point E on the Decision Plan) and turning in a generally northerly direction for approximately 45 metres to grid reference ST 6982 6074 (point F on the Decision Plan) (referred to as "the Existing FP").
- 6.3 **Description of the Proposed Footpath**
A section of FP commencing from grid reference ST 6979 6063 (point A on the Decision Plan) and proceeding in a generally west

northwesterly direction for approximately 12 metres to grid reference ST 6978 6064 (point G on the Decision Plan) and turning in a generally northerly direction for approximately 102 metres to grid reference

ST 6981 6074 (point H on the Decision Plan) and turning in a generally east northeasterly direction for approximately 15 metres to grid reference ST 6982 6074 (point F on the Decision Plan).(referred to as "the Proposed FP").

- 6.4 The Proposed FP will be 2 metres wide.
- 6.5 **Limitations and Conditions** - The Proposed FP will be created without any limitations or conditions. Authorisation of pedestrian kissing gates is proposed under section 147 of the Act at field boundaries to prevent the ingress and egress of animals.

7. Consultations

- 7.1 Affected landowners, Priston Parish Council, national and local user groups, the Ward Councillors and statutory undertakers were all consulted for a period of four weeks ("the Consultation Period"). Additionally, site notices were erected at either end of the section of the Existing FP 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 Priston Parish Council stated their support for the proposal.
- 7.4 The area Ramblers representative stated he had no objection to the proposal.

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 paths in the interests of the public and/or of the owner, lessee or occupier of the land crossed by the path:** The Existing FP runs through water treatment works close to and along the boundary, which is hedged. The Proposed FP will run outside of the water treatment works on what is currently a permissive route already in use by the public. The diversion is proposed in the interest of the landowner to remove the route from the water treatment works, improving land management, including safety and security. 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 FP and Proposed FP start and finish at the same points on the same path. 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 Existing and Proposed FPs are of a similar length, taking into account the nature of walking in the vicinity. The public will be able to avoid the environs of the water treatment works, thereby improving ease of walking. The Proposed FP is therefore not substantially less convenient to the public as a consequence of the diversion. 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 Path:** The Existing and Proposed FPs are very close in proximity but walking outside of the water treatment works and through a pleasant wooded area will improve public enjoyment of the path as a whole; 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:** No adverse effect has been identified on other land served by the Existing FP or on land affected by the Proposed FP; 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:** The landowner of the Proposed FP has previously provided a permissive path for use by the public and has indicated that he approves of the diversion on his land and waives any right to compensation; 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 have a positive effect on the Authority achieving actions which are identified in the Rights of Way Improvement Plan's Statement of Action. The proposal will assist with Improving Maintenance and Safety (theme 1) and improving access for local travel (theme 4), by improving access for all, especially for people with mobility difficulties and visual impairments.

- 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 Proposed FP will have no adverse effect on farming, forestry or biodiversity as the Proposed FP runs over an existing permissive path. Path users with mobility and sight impairments will benefit from avoiding the water treatment works and from an improved surface and clear route which is easy to follow.
- 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 Path users with mobility and sight impairments will benefit from a route avoiding the water treatment works and boundary hedge. The Proposed FP is easily followed. The proposed diversion has a neutral effect on those with other impairments.
- 8.16 Kissing gates will be authorised at field boundaries for stock control purposes but this is in keeping with the nature of the surrounding farmed area. Authorisation of the gates is in keeping with the principles of 'Least Restrictive Access'.
- 8.17 The Proposed FP will be easier to maintain, will improve safety for the public and be a more pleasant walk because it is outside of the hedge and boundary of the water treatment works.
- 8.18 The Proposed FP does not have any impact on connectivity, gradient, width or status.
- 8.19 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 FPs.

11. Conclusion

- 11.1 It appears that the relevant statutory tests for making such a diversion Order have been met and that the proposal is 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.

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 FP BA20/1 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: 18th February 2022

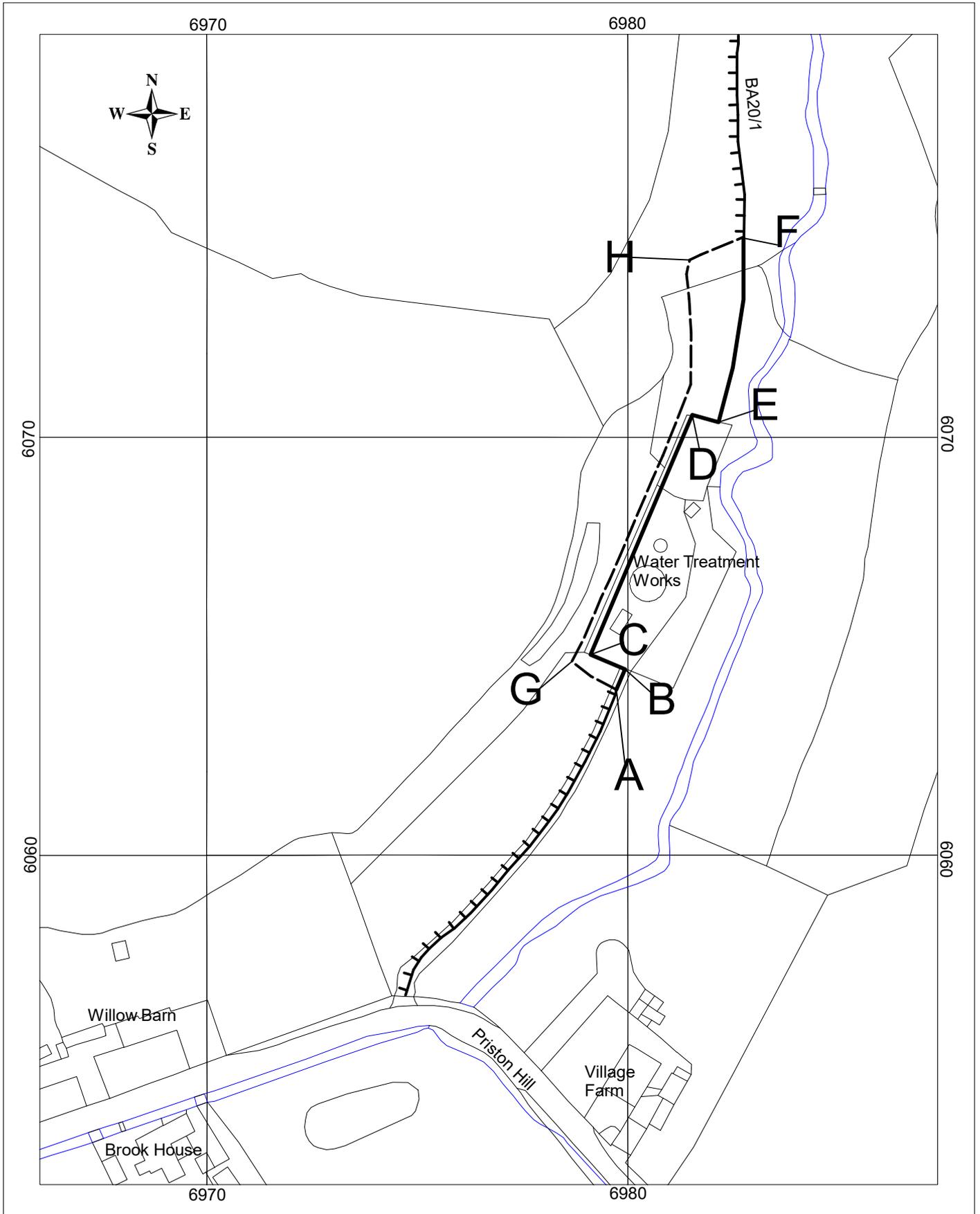
Craig Jackson

Team Manager - Highways Maintenance and Drainage

**Appendix 1
Decision Plan
Public Footpath BA20/1,
Priston**

Public footpath to be created **A G H F**
 Unaffected public footpath **—————**
 Public footpath to be stopped up **A B C D E F**

Scale: 1:1,250



DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of a section of Public Footpath BA20/1 commencing from grid reference ST 6979 6063 (point A on the Decision Plan) and proceeding in a generally north northeasterly direction for approximately 6 metres to grid reference ST 6979 6064 (point B on the Decision Plan) and turning in a generally west northwesterly direction for approximately 9 metres to grid reference ST 6979 6064 (point C on the Decision Plan) and turning in a generally north northeasterly direction for approximately 62 metres to grid reference ST 6981 6070 (point D on the Decision Plan) and turning in a generally easterly direction for approximately 6 metres to grid reference ST 6982 6070 (point E on the Decision Plan) and turning in a generally northerly direction for approximately 45 metres to grid reference ST 6982 6074 (point F on the Decision Plan) .

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A section of public footpath commencing from grid reference ST 6979 6063 (point A on the Decision Plan) and proceeding in a generally west northwesterly direction for approximately 12 metres to grid reference ST 6978 6064 (point G on the Decision Plan) and turning in a generally northerly direction for approximately 102 metres to grid reference ST 6981 6074 (point H on the Decision Plan) and turning in a generally east northeasterly direction for approximately 15 metres to grid reference ST 6982 6074 (point F on the Decision Plan).

Width: 2 metres between grid reference ST 6979 6063 (point A on the Decision Plan) and grid reference ST 6982 6074 (point F on the Decision Plan).

PART 3

LIMITATIONS AND CONDITIONS

None.