

**APPLICATION FOR A PUBLIC PATH DIVERSION
ORDER AFFECTING PUBLIC FOOTPATH BA22/7 AT
COMBE PATH LAWN, SOUTH STOKE**

1. The Issue

- 1.1 An application has been made by a landowner of Combe Path Lawn (“the Applicant”) to divert Public Footpath (“FP”) BA22/7 at Combe Path Lawn, South Stoke to provide a junction with the carriageway further north-west than the current junction. This is intended to facilitate a safer and more convenient crossing of the carriageway between FP BA22/7 and FP BA22/8.

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 Public Footpath BA22/7 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 including the cost of any required notices in a local newspaper. The Ward Councillor and the Applicant have contributed towards the cost of the informal consultation. The Applicant has agreed to pay any compensation payable and any 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 Development Management 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.
- 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 FP BA22/7 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 FP BA22/7 crosses a field from a junction with Packhorse Lane to a junction with Old Midford Road. To continue along the footpath network to FP BA22/8 the shortest route for a walker is to cross Old Midford Road to a grass verge; cross the verge then cross Midford Road (B3110) at a bend on the road and vice versa.
- 6.3 The Applicant and South Stoke Parish Council have been concerned for some time regarding the safety of the public when crossing from one footpath to the other. The direct line from one footpath to the other crosses two highways. Firstly, pedestrians cross Old Midford Road, which is a quiet class 4 highway with a footway on the southwest side but only grass verge on the northeastern side. Secondly, pedestrians cross Midford Road (B3110) on a bend, where there is a 40 mph speed limit and only grass verge on the southern side and a tarmac footway to the northern side of the carriageway.
- 6.4 The Bath and North East Somerset Council Highways Traffic Management Senior Engineer attended the site prior to the application being submitted and advised *"I visited site on Monday and met [the Applicant] there, who kindly walked through the issues that pedestrians/walkers find themselves in when using the existing route across the B3110. We then walked the proposed new route and crossed Midford Road, which provides much improved sight lines and ultimately giving a safer crossing point. I support this proposed alternative route and believe it can provide a much improved crossing point than the existing. I[n] conjunction to these changes, I propose to install a pedestrian warning sign to oncoming traffic from the Midford direction and put forward to a colleague the installation of a set of dropped kerbs once the diversion has taken place."*
- 6.5 The Applicant has proposed a diversion so that the footpath exits from the field onto the highway approximately 61 metres further northwest to facilitate a safer and more convenient highway crossing for the walker

who wishes to access FP BA22/8 and vice versa. The proposed junction onto Midford Road (B3110) is on a straighter section of carriageway which has tarmacked footway on both sides with better visibility for pedestrians and drivers.

6.6 Description of the Existing Footpath

The proposal is to divert the full width of FP BA22/7 commencing from a junction with Packhorse Lane at grid reference ST 7509 6141 (point A on the Decision Plan) and proceeding in a generally northeasterly direction for approximately 170 metres to a junction with Old Midford Road at grid reference ST 7521 6153 (point B). This route is referred to as "the Existing Footpath".

6.7 Description of the Proposed Footpath

The proposal diverts the footpath commencing from a junction with Packhorse Lane at grid reference ST 7509 6141 (point A) and proceeding in a generally north-northeasterly direction for approximately 189 metres to a junction with Midford Road (B3110) at grid reference ST 7517 6158 (point C). It is proposed that the width will be two metres throughout. This route is referred to as "the Proposed Footpath".

6.8 Limitations and Conditions

No limitations or conditions are proposed. The Proposed Footpath would cross field boundaries and authorisation of kissing gates at points A and C is proposed under section 147 of the Act to prevent the ingress and egress of animals.

7. Consultations

- 7.1 The affected landowners, South Stoke Parish Council, national and local user groups, the Ward Councillor 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 points A, B and C and on the Authority's website to seek the views of members of the public. There was an issue with the website notice not showing correctly for a few days. The issue was resolved and the objection period was extended for a further week because of this.
- 7.2 The consultation included the statement that "*The proposal is supported by the local Councillor, Parish Council and B&NES Traffic Management*".
- 7.3 In response to the consultation, Western Power Distribution stated they have apparatus crossing the Existing Footpath and through the field. Other statutory undertakers have apparatus in Midford Road (B3110) which is not affected. No statutory undertakers objected to the proposal. The rights Western Power Distribution currently hold to maintain their apparatus on the Existing Footpath will be preserved in the order.

- 7.4 Two letters were received during the Consultation Period from members of the public in opposition to the Proposed Footpath.
- 7.5 Issues raised by the objectors are summarised as follows:
1. The safest crossing of Midford Road (B3110) (best visibility) - it was suggested that the Proposed Footpath is not the safest and it may be that the safest crossing in one direction is not the safest crossing in the other direction. No incidents/accidents have been reported. Walkers will not be able to see the proposed entrance to FP BA22/7 from FP BA22/8 and so are unlikely to use it.
 2. Walkers do not actually walk from one footpath to the other but may just walk along Old Midford Road and these people may not find the proposal as convenient.
 3. The nature of the footpath would change by coming out onto a footway of a B-road as opposed to the rural Old Midford Road.
- 7.6 A further communication was sent to the interested parties outlining the issues raised by the objectors and further comments were invited. The interested parties were given a further 4 weeks to comment.
- 7.7 An additional 8 submissions were received in support of the proposal. All these submissions cited that visibility and safety for walkers and drivers are increased by encouraging the public to cross Midford Road (B3110) near the junction of the Proposed Footpath at point C. They also stated that it would be safer to cross one carriageway instead of two.
- 7.8 A further submission was received from one original objector. The objector is concerned that B&NES Highways should address any safety issues and that the footpath diversion process is not the correct way of dealing with the safety issue but a permissive path is a better option. This objector is also concerned with the surface of the proposed footpath, stating that it is more undulating and less suitable than the existing footpath and that the exit would require removal of mature hedgerow. He is concerned that the diversion may allow for future development.
- 7.9 There were no additional objections received during the further 4 weeks.
- 7.10 Section 8 addresses the issues raised.

8. Officer Comments

- 8.1 **Officer Comments on issues raised during consultation that are outside the remit of the footpath diversion process:**
1. *A permissive path would be better.* A permissive path will not stop walkers from exiting the footpath at its current position on the Old Midford Road, only offer an alternative.

2. *The diversion may allow for future development.* Any future development will be subject to the usual planning constraints.

3. *The crossing points should be decided by B&NES and not the Applicant.* The position of the crossing point was approved by B&NES Traffic Management prior to the application being made.

4. *The crossing points (i.e. changes to be made to Midford Road (B3110) carriageway such as lowered footway/bollards etc.) should be installed before the footpath is diverted.* This is not part of the footpath diversion process and is independent of the diversion of the footpath.

8.2 It is recommended that the various tests outlined in section 5 above are considered in turn.

8.3 **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:** It is proposed to make the order in the interest of the public, in order to improve the safety of walkers using the footpath network and wishing to go from FP BA22/7 to FP BA22/8 and vice versa. The Authority's Senior Engineer, Traffic Management Team has stated that the Proposed Footpath exit "*provides much improved sight lines and ultimately giving a safer crossing point*". The safer crossing point will benefit any member of the public who wishes to cross Midford Road (B3110) from the Proposed Footpath even if they are not accessing FP BA22/8. Improved visibility for all walkers and drivers at the exit of the Proposed Footpath will decrease any danger to walkers from the passing traffic. Incidents on the highway in the vicinity have been reported including The Bath Chronicle in January 2018 reporting '*Police are on Midford Road in South Stoke directing traffic and a passerby said a car had overturned.*' It is therefore considered that the public will derive benefit from the diversion; this test should therefore be considered to have been met.

8.4 **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 start from the same point on Packhorse Lane. The Proposed Footpath will terminate on Midford Road (B3110) approximately 61 metres northwest of the Existing Footpath's current junction with Old Midford Road. This junction is closer to Bath and its amenities and provides improved visibility for walkers and drivers making the junction more convenient to the public; this test should therefore be considered to have been met.

8.5 **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 length of the Proposed Footpath is approximately 19 metres more; however, it depends where the walker is heading as to how much further they will need to walk. If the walker is travelling northwest they will travel approximately 42 metres less altogether and

approximately 61 metres less on a tarmac footway. The facilities of Bath are in this direction and may be the more popular direction for walkers that aren't following the footpath network. The intention of the diversion is to improve connectivity with FP BA22/8 by facilitating a safer, more convenient crossing point. The Proposed Footpath therefore exits at a more convenient point for the public to cross from one FP to the other. The walker crossing from one FP to the other will travel a further 61 metres. An objection was raised during consultation that walkers do not actually walk from one FP to the other but may just walk along Old Midford Road and these people may not find the proposal as convenient. If the walker wishes to head southeast along Old Midford Road they will travel approximately 80 metres further including approximately 61 metres on the tarmac footway. However, if the walker is heading in the southeasterly direction away from the facilities of Bath it is considered that the additional distance will be insignificant when considering the rural nature of the walk. There is no impact regarding difficulty of walking as the terrain is similar over the field. The intention of the diversion is to increase convenience by facilitating a safer crossing on Midford Road (B3110) and as such the proposal is considered to not be substantially less convenient. This 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 as a whole:** The Proposed Footpath crosses similar terrain with similar views within the same field as the Existing Footpath. There is therefore no negative impact on public enjoyment of the Proposed Footpath; 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 footpath:** The proposed diversion will not have an adverse effect on either land served by the Existing Footpath or land affected by the Proposed Footpath; 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 Proposed Footpath is under the same land ownership as the Existing Footpath. There is therefore no adverse effect with regard to compensation. This test should therefore be considered to have been met.
- 8.10 **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 diversion will have no adverse effect on farming, forestry or biodiversity as the Proposed Footpath crosses the same field as the Existing Footpath. A new junction will be made through the hedge onto Midford Road (B3110) but this is mitigated by

replacement of hedging at the existing junction. The improved connectivity with FP BA22/8 by facilitating a more convenient and safe crossing of Midford Road (B3110) will have a positive impact on those with mobility, hearing and visual impairments. The proposed diversion has a neutral effect on those with other impairments.

- 8.11 **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:**
- 8.12 The diversion will facilitate improved connectivity by creating a more convenient and safe crossing of Midford Road (B3110) in order to access FP BA22/8. An objection was raised during consultation that walkers will not be able to see the proposed entrance to BA22/7 from BA22/8 and so are unlikely to use it. However, the Traffic Management Senior Engineer has indicated that if the diversion goes ahead the installation of a set of dropped kerbs and possibly a bollard on the widest part of footway will be considered. The footpaths will be signed by green finger-posts on the highway which should be visible from the opposite footpath. Other signage will be installed if considered necessary.
- 8.13 The diversion will facilitate improved visibility when crossing Midford Road (B3110) to enter or exit the Proposed Footpath. It will therefore have a positive impact on those with mobility, hearing and visual impairments. The proposed diversion has a neutral effect on those with other impairments.
- 8.14 There are kissing gates at either end of the Existing Footpath. It is intended to authorise kissing gates at points A and C to prevent the ingress and egress of animals. Authorising the gates would be in keeping with the principles of 'Least Restrictive Access'.
- 8.15 The diversion has been proposed in order to improve the safety of the public when crossing Midford Road (B3110). The proposed junction at point C is on a straighter stretch of road providing improved visibility for all pedestrians and drivers. If an individual wishes to cross elsewhere this is still an option. An objection was raised during consultation that the proposed junction did not facilitate the safest crossing of Midford Road (B3110). It was suggested that it may be that the safest crossing in one direction is not the safest crossing in the other direction. The issue of the position of the best crossing point was given consideration at site meetings before the application was made and it was agreed with B&NES Traffic Management Senior Engineer that this junction facilitated the safest crossing - please refer to paragraph 6.4. An objector suggested that there are better ways to manage the crossing point and the Authority's Traffic Management Team will consider lowered footways, a bollard and traffic sign if the diversion goes ahead.

- 8.16 The public and drivers will have better visibility as walkers exit the Proposed Footpath and this may also increase safety for those not crossing Midford Road (B3110). It is considered, therefore, that safety will be improved for everyone, including those with mobility, hearing or visual impairments.
- 8.17 An objection was raised during the consultation that the nature of the footpath would change by coming out onto a pavement of a B-road as opposed to the rural Old Midford Road. However, of the 61 metres between point B and point C, 46 metres is still a footway with a grass verge between the walker and the carriageway (i.e. Old Midford Road). The distance where the walker is next to the carriageway on Midford Road (B3110) is approximately 15 metres. The intention of the proposal is to provide better visibility and this will intentionally change the nature of the exit. There is no change to the nature of the footpath itself.
- 8.18 An objection was raised that the surface of the Proposed Footpath is not as suitable as the Existing Footpath. The Applicant has agreed to the works required to raise the new route to an acceptable standard for use by the public.
- 8.19 The diversion does not have any overall impact on Gradients, Maintenance, Status, Width or Features of Interest.
- 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 public.
- 10.3 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 Public Footpath BA22/7 as shown on the Decision Plan and as detailed in the Decision Schedule and to confirm the Order if no sustained objections are received.

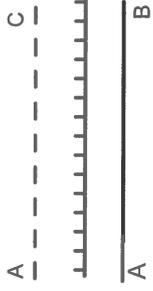


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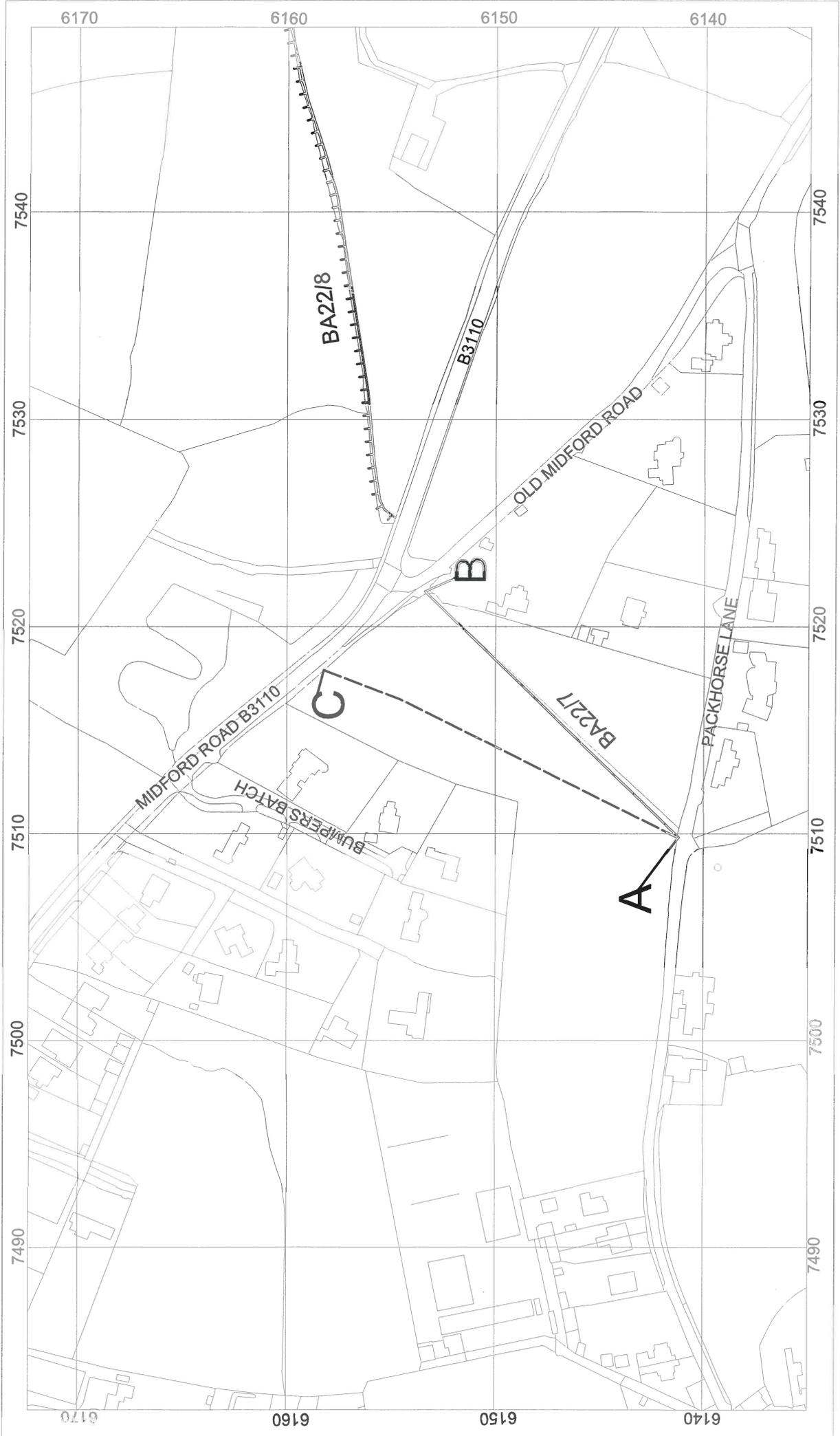
Craig Jackson – Team Manager, Highways Maintenance and Drainage

**Appendix 1
Decision Plan
Public Footpath BA2217, South Stoke**

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



Scale: 1:2500



DECISION SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of Public Footpath BA22/7 commencing from a junction with Packhorse Lane at grid reference ST 7509 6141 (point A on the Decision Plan) and proceeding in a generally northeasterly direction for approximately 170 metres to a junction with Old Midford Road at grid reference ST 7521 6153 (point B on the Decision Plan).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from a junction with Packhorse Lane at grid reference ST 7509 6141 (point A on the Decision Plan) and proceeding in a generally north-northeasterly direction for approximately 189 metres to a junction with Midford Road B3110 at grid reference ST 7517 6158 (point C on the Decision Plan).

Width: 2 metres between grid reference ST 7509 6141 (point A on the Decision Plan) and grid reference ST 7517 6158 (point C on the Decision Plan).

