

## **SECTION 119 HIGHWAYS ACT 1980**

### **APPLICATION FOR PUBLIC PATH DIVERSION ORDER AFFECTING PUBLIC FOOTPATH CL4/19 – Long House Farm, Chew Stoke**

(Ward Division: **Chew Stoke**)

#### **1. The Issue**

- 1.1 The proposal is to divert part of public footpath CL4/19 away from a new residence (a barn conversion) at Long House Farm onto a new route across surrounding farmland. The diversion will facilitate better management of the agricultural buildings and paddock which are used to breed and keep horses.

#### **2. Recommendation**

- 2.1 That the Divisional Director - Environmental Services grant authorization for a Public Path Diversion Order to be made, diverting part of Public Footpath CL4/19 as proposed in this report.

#### **3. Financial Implications**

- 3.1 The applicant has agreed to pay the Council's standard administration cost for processing an Order (i.e. £800) and also to pay for any required notices in a local newspaper. The applicant has also agreed to meet the costs of bringing the proposed new route into a suitable condition for public use, which includes provision of any required pedestrian gates. Should an Order be made and confirmed, the new route will become maintainable at public expense.
- 3.2 Should an Order be made and objections received and sustained, then the Order will be referred to the Regulatory (Access) Committee to consider the matter in light of those objections. Should the Committee decide to continue to support the Order, then it must refer the Order to the Secretary of State for the Environment, Food and Rural Affairs for determination. The Council 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 Council is required to consider the application in accordance with the principle of proportionality. The Council 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 Background**

- 5.1 The Council has a discretionary power to make Public Path Orders. When considering an application for a Public Path Order, the Council should first consider whether the proposals meet the requirements set out in the legislation and 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, it may exercise its discretion not to make the Order.
- 5.2 Before making an order under Section 119 Highways Act 1980 it must appear to the Authority that it is expedient to divert the path in the interests either of the public or of the owner, lessee or occupier of the land crossed by the path.
- 5.3 The Authority must also be satisfied that the diversion 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.

## **6. Background and Application**

- 6.1 The diversion application has been made to enable the new residence (a barn conversion) at Long House Farm to be securely fenced off from the public rights of way network (improving privacy) and to facilitate better management of the agricultural buildings, which are used to breed and keep horses. At present walkers and horses come into contact as the path crosses the farmyard entrance. A temporary diversion order was in place on footpath CL4/19 from 1<sup>st</sup> November 2006 to 1<sup>st</sup> May 2007 to enable the conversion of the barn and

associated works. The temporary closure was extended until 31<sup>st</sup> August 2007.

- 6.2 An application to divert public footpath CL4/19 was received at this office on 11<sup>th</sup> December 2006 from Mrs Lindsey Suenson-Taylor of Long House Farm, Chew Stoke. The proposal is for an Order to be made in the interest of the landowner: Mrs Suenson-Taylor owns and occupies the affected property.
- 6.3 The new route of the path will run along land owned by Mrs Suenson-Taylor who will benefit from the diversion as owner of the residence and land crossed by the existing path.

#### **Description of the Route to be Diverted**

- 6.4 The route that is to be diverted begins on footpath CL4/20 at point W (on the plan attached) and passes through a field gate (point X) into the farmyard at Long House Farm and through another field gate (point Y) into a paddock. The path continues across the paddock to the hedge line where it is obstructed by overgrowing vegetation (point Z). The path continues across a field to point C. The total length of this section of footpath CL4/19 is 436m.

#### **Description of the Proposed New Route**

- 6.5 The proposed new route will start on footpath CL4/20 (point A on the plan attached), a distance of 112m in a south-westerly direction and then 32m in a north-westerly direction from the original start point at point W. The path leads up a slope through a wooded area and then follows the new fence boundary which encloses the paddock up the slope to a wooden bridge (point B) at the field boundary. The footpath continues across the next field to the right of a wire and post fence to point C. The total length of the route is 393m and will have a width of 2m minimum.

### **7. Consultations**

- 7.1 Chew Stoke Parish Council, the Ramblers Association, Ward Councillor, utility companies and other user groups were all consulted about the proposed diversion.
- 7.2 The landowner's original proposal for the diversion route raised several objections from the Parish Council, Ramblers Representative and members of the public. Several alternatives were proposed involving site visits between Public Rights of Way Officers, The Parish Council, the landowner and Ramblers Representative. An alternative route was consulted upon and the Ramblers Representative agreed to the new proposal. The Parish Council wrote to the Public Rights of Way Team on 24<sup>th</sup> October 2007 to agree to the diversion of the footpath CL4/19,

subject to the following conditions: 'the descent into the sunken lane CL4/20 should be kept clear and overhanging vegetation should be cut back to avoid the path becoming slippery and the conditional dedication route marked on Plan A dated 3<sup>rd</sup> August linking CL4/19 to CL4/20 should be established as a public footpath'.

- 7.3 Copies of the informal consultations and responses are available if required.

## **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 either of the public or of the owner, lessee or occupier of the land crossed by the path.**
- 8.3 Public footpath CL4/19 currently runs across fields by Long House Farm, Chew Stoke. The landowner has applied for the diversion of the footpath to enable a new residence (a barn conversion) at Long House Farm to be securely fenced off from the public rights of way network (improving privacy) and to facilitate better management of the agricultural buildings which are used to breed and keep horses: at present walkers and horses come into contact as the path crosses the farmyard entrance. The proposed new route will partly utilize an existing stretch of public footpath CL4/20, rerouting the footpath across the paddock lying alongside Long House Farm.
- 8.4 The rerouting of the path will improve the security and privacy at the new residence, benefiting the owner. The diversion can be expected to make the property more saleable and to raise the value in each case, benefiting the owners. The landowner breeds horses and has experienced abuse from dog walkers when asked to keep their dogs on a lead in the presence of the horses. Members of the public have also strayed from the route of the footpath to look into the barns to see the horses. It is considered that this test has been met.
- 8.5 **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.**
- 8.6 The effect of the diversion is to move the southern end of the footpath a distance of 144 metres further along the route of footpath CL4/20. The termination point (A) will be at the bottom of a slope where the new path meets CL4/20. The Parish Council has requested for this section of path to be kept clear, with overhanging vegetation to be cut back to avoid the path becoming slippery. Provided this request is

observed – the new path will be maintainable at public expense and the Council has statutory powers to require the clearance of obstructive overhanging vegetation, it is considered that moving the termination point will not make access to the path less convenient to the public. It is considered that this test has been met.

**8.7 The path must not be substantially less convenient to the public as a consequence of the diversion.**

8.8 This path will be decreased in length from a total length of 898 metres to 855 metres. In order to get from point W to point C, a walker is currently required to walk a distance of 436 metres. The route WABC is a distance of 537 metres. The total increase in length to a single journey is 101 metres which is not considered substantially less convenient to walkers, especially considering the recreational function of this path.

8.9 Footpath CL4/19 currently runs across a farmyard and up a slope, across the field to the hedge boundary where the gradient levels. A walker wishing to get to point C from point W would walk along the relatively flat section of footpath CL4/20 to the beginning of the diversion route at point A. The incline from point A into the field and beyond to point B is similar to that of the diverted route.

8.10 The route to be diverted currently passes through a field gate into the farmyard (point X) and then leaves the farmyard through another field gate (point Y) into the paddock beyond. The enclosure of the paddock resulted in the addition of a ladder stile. The proposed new route does not require any gates or stiles, making the new route appear to be more convenient for walkers. A bridge crosses the ditch at point B. There is no evidence that the new route will be substantially less convenient to the public and so it is considered that this test has been met.

**8.11 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.**

**Effect on Public Enjoyment of the path**

8.12 The path passes through a field gate into the farmyard of Long House Farm (point X) and continues through another field gate (point Y) into the paddock beyond. A new fence was constructed to separate the paddock from the proposed route and a ladder stile has been provided to cross this boundary. If the diversion does not go ahead, the issue of the fence and ladder stile must be addressed, as well as the overgrown access point at the field boundary at point Z. The diversion of the path from point Z to point B dispenses with the need for a crossing at point Z as there is a gap in the hedge at point B which

leads to a wooden bridge crossing the ditch. The diversion route does not require any gates or stiles and is therefore considered to be more accessible to the public.

- 8.13 The Parish Council and others raised objections to the first diversion route proposed, stating that the views of the village enjoyed when walking from point Z to point Y would be lost. Consultations produced an alternative diversion route and it is considered that the views of the village are not affected by altering the original route from point Z to point Y to the new route from point B to point A.
- 8.14 The difference between the sections Z to C and B to C are negligible, both being of the same gradient and across the same field. Route B to C is nearer the fence line and this is considered to be neither an advantage nor disadvantage.
- 8.15 By diverting the path away from the farmyard, walkers will no longer come into contact with the horses and vehicles using the farmyard. Some people are nervous of coming into contact with horses. The horses are separated from users of the proposed route by a fence. As the diversion reroutes the path away from a farmyard it could be argued that walkers will feel less inhibited walking the new route, increasing their enjoyment.
- 8.16 If the diversion of footpath CL4/19 is confirmed, the landowner will dedicate a public footpath linking footpaths CL4/19 and CL4/20, improving the network of public rights of way on her land. The route of the conditionally dedicated public right of way is shown as L – B on the attached plan.

#### **Effect on other land served by diversion and land affected by new path**

- 8.17 The diversion will benefit the land currently served by the path by improving privacy and security measures at the farmyard.
- 8.18 The proposed route crosses the same fields as the route to be diverted. It is separated from grazing horses in the lower field by a fence.
- 8.19 The path to be dedicated crosses the same field as the proposed route and the route to be diverted.
- 8.20 **It is considered that this test is met.**

#### **9. Risk Management**

- 9.1** The new route will be diverted away from the farmyard, reducing potential conflict between walkers, farm vehicles and horses. Walkers will be required to walk along the gravelled section of footpath CL4/20, part of the Two Rivers Way, before joining the diversion route at point

A. The Parish Council has highlighted potential issues with overhanging vegetation and slippery surfaces at point A but accepted the proposed route provided the vegetation is kept cut back to allow surfaces to dry out.

- 9.2 There is a duty for the Council, as Highway Authority, to prevent obstruction of public highways under section 130 of the Highways Act 1980. If the footpath diversion is not successful then the Council is obliged to ensure that the obstructions on this public footpath are removed.

## **10. Conclusion**

- 10.1 It appears that the relevant statutory tests for making such a diversion Order have been met.
- 10.2 The Order is in the interest of the landowners, lessee and occupiers.
- 10.3 The Order should be made as proposed.

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## **AUTHORISATION**

Under the authorisation granted by the Planning, Transportation and Environment Committee the Planning and Environmental Law Manager is hereby requested to prepare and seal an order to divert public footpath CL4/19 running from the line WXYZC onto the new line ABC as shown on the attached map, the width of the new path to be 2 metres throughout and to confirm the Order if no sustained objections are received.

The Planning and Environmental Law Manager is also requested to prepare (and seal) a conditional dedication agreement to create a Public Footpath between points L and B, of width 1.8 metres, to take effect on confirmation of the proposed diversion order of CL4/19 above.

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Dated: 6/10/08.....

Matthew Smith, Divisional Director - Environmental Services

## SCHEDULE

### **PART 1 DESCRIPTION OF SITE OF EXISTING PATH OR WAY**

#### **Path within the Parish of Chew Stoke, Bath & North East Somerset**

**CL4/19** Public footpath CL4/19 running from point W at Grid Reference ST 5557 6189 on public footpath CL4/20 on the map annexed to this Order in a generally north-north-westerly direction for a distance of 18 metres to a field gate at point X at Grid Reference ST 5556 6190. The footpath continues for a distance of 6 metres to a field gate at point Y at Grid Reference ST 5555 6190. The footpath continues in a generally north-westerly direction across the paddock for a distance of 177 metres to point Z at Grid Reference ST 5540 6199 and continues for a further distance of 235 metres to point C at Grid Reference ST 5526 6217 as shown on the said map by a bold continuous line.

### **PART 2 DESCRIPTION OF SITE OF NEW PATH OR WAY**

**CL4/19** A public footpath running from point A at Grid Reference ST 5546 6184 on public footpath CL4/20 on the map annexed to this Order running in a generally north-westerly direction for a distance of 163 metres to a bridge at point B at Grid Reference ST 5539 6198 and continuing for a distance of 230 metres to point C at Grid Reference ST 5526 6217 as shown on the said map by a bold broken line. Total length: 393 metres. Width: 2 metres.



# Proposed Footpath Diversion

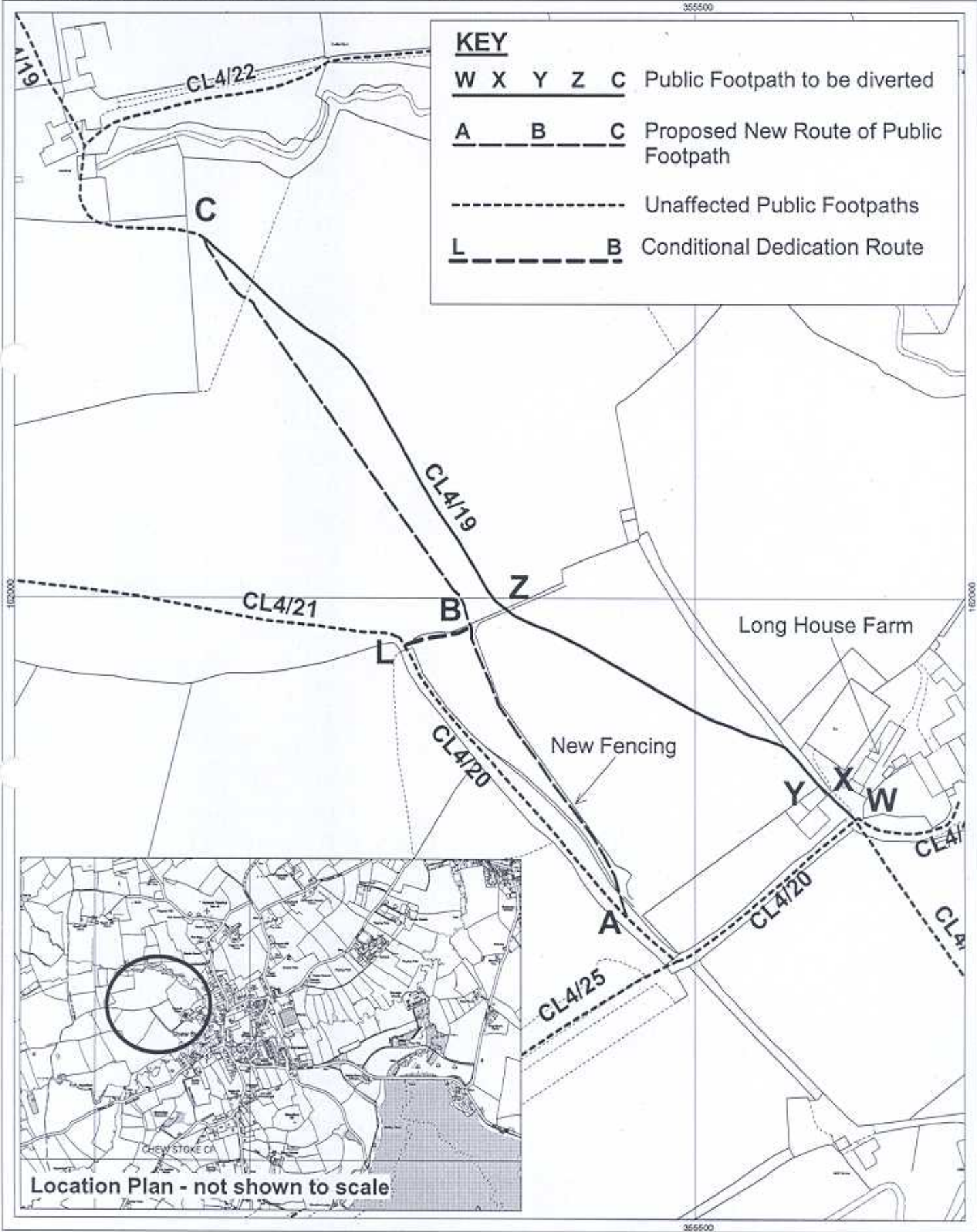
Public Footpath CL4/19, Long House Farm, Chew Stoke.  
Public Path Diversion Order 2008

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Temple Street  
Keynsham  
Bristol BS31 1LA  
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Compiled by JK on 26 September 2008

Scale 1:2500



**KEY**

<u>W X Y Z C</u>	Public Footpath to be diverted
<u>A B C</u>	Proposed New Route of Public Footpath
-----	Unaffected Public Footpaths
<u>L B</u>	Conditional Dedication Route



Location Plan - not shown to scale