

PUBLIC PATH DIVERSION ORDER

HIGHWAYS ACT 1980

BATH AND NORTH EAST SOMERSET COUNCIL

Bath and North East Somerset Council (Public Footpath CL12/9 (part), Abbots Barn Farm, Hinton Blewett) Public Path Diversion Order 2010

This Order is made by Bath and North East Somerset Council ('the authority') under section 119 of the Highways Act 1980 ('the 1980 Act') because it appears to the authority that in the interests of the owner of the land crossed by the footpath described in paragraph 1 of this order it is expedient that the line of the path should be diverted.

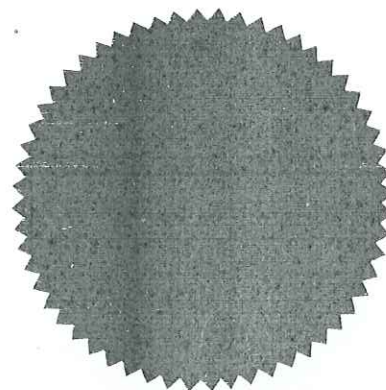
BY THIS ORDER:

1. The public right of way over the land situated at Abbots Barn Farm, Hinton Blewett and shown by a bold continuous line on the map contained in this order and described in Part 1 of the Schedule to this order shall be stopped up from the date that Bath and North East Somerset Council certifies that work has been carried out to bring the site of the new highway mentioned in Article 3 into a fit condition for use by the public.
2. Notwithstanding paragraph 1 of this order statutory undertakers shall have the same rights over the land referred to in paragraph 1 above, in respect of their apparatus under, in, upon, over, along or across the said land as they had immediately before the date of confirmation of this order.
3. There shall from the date of confirmation of this order be a public footpath over the land situated at Abbots Barn Farm, Hinton Blewett described in Part 2 of the Schedule and shown by a bold broken line on the map attached to this order.
4. The rights conferred on the public under this order shall be subject to the limitations and conditions set out in Part 3 of the Schedule.

Given under the Common Seal of the Bath and North East Somerset Council the 21st day of April 2010.

The COMMON SEAL of the
BATH AND NORTH EAST SOMERSET
COUNCIL
was hereunto affixed
in the presence of:-

Authorised signatory



AUTHORITY FOR SEALING	
Council resolution	Regulatory (Access) Committee
Committee minute	34 of 6/4/10
Initials	KE

SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The full width of that section of public footpath CL12/9 commencing from a junction with Lower Road at Grid Reference ST 5951 5701 (Point A on the Order Map) and continuing in a generally north easterly direction over the drive and garden of Abbots Barn Farm for approximately 100 metres to Grid Reference ST 5955 5710 (Point D on the Order Map).

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

A public footpath commencing from a junction with Lower Road at Grid Reference ST 5951 5701 (Point A on the Order Map) and continuing in a generally north easterly and south easterly direction for approximately 19 metres to Grid Reference ST 5953 5701 (Point B on the Order Map) and turning in a generally north easterly direction following the field boundary for approximately 92 metres to Grid Reference ST 5956 5710 (Point C on the Order Map) and turning in a generally north westerly direction for approximately 7 metres to Grid Reference ST 5955 5710 (Point D on the Order Map).



Width: 2 metres between Grid Reference ST 5951 5701 (Point A on the Order Map) and Grid Reference ST 5955 5710 (Point D on the Order Map).

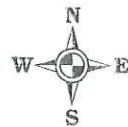
PART 3

LIMITATIONS AND CONDITIONS

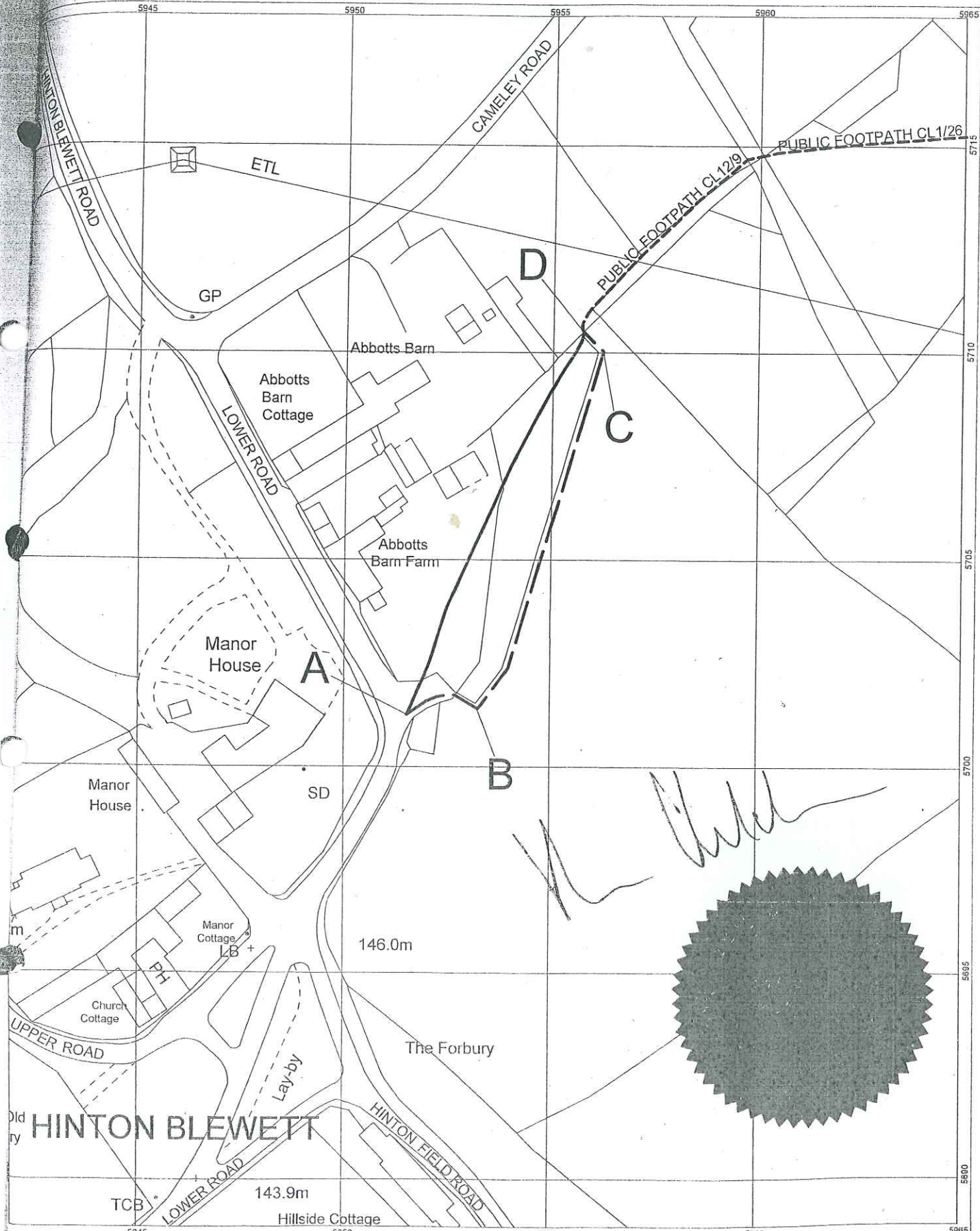
None.

This map forms part of the Bath and North East Somerset Council
Public Footpath CL12/9 (part),
Abbotts Barn Farm, Hinton Blewett)
Public Path Diversion Order 2010

- Unaffected public footpath 
- Footpath to be stopped up 
- Footpath to be created 



Scale 1:1250



Hinton Blewett Parish Council

24th May 2010

Mr G Stark, Mapping Officer
Bath & North East Somerset Council
Environmental Services, Floor 2,
Riverside, Temple Street,
Keynsham
Bristol BS31 1LA

RECEIVED
26 MAY 2010

Dear Mr Stark,

Proposal to divert a section of definitive public footpath CL12/9 at Abbots Barn Farm, Hinton Blewett.

The Parish Council submits that Bath & North East Somerset Council ('the authority') has unreasonably fettered itself by setting its mind against the views of the Parish Council.

1. We ask that the authority have due regard to one of the leading judgments in this area of the law, namely that of the Court of Appeal in *Regina on the application of Hargrave v Stroud District Council* [2002] EWCA Civ 1281. This concerned the ability of an order-making authority to change its mind after having gone the length of making an order under section 119 of the Highways Act 1980 and duly advertised it in accordance with the provisions of Schedule 14. The Court of Appeal held that, even though it had first resolved to make an order, an authority could rescind the order in the light of objections received to its confirmation. The tenor of the judgment is that (since at least some of the factors connected with the effect of the diversion on public enjoyment of the path are to an extent a matter of subjective opinion) a council can rescind an order even where the objections are mere expressions of opinion as to heritage-value, etc, though the triggering-criteria were well-met. We submit that the force of the judgment applies *a fortiori* to the present situation, where an order has not yet been made.

2. Two especially material passages from *Hargrave* in the Court of Appeal are—

[By Lord Justice Schiemann at paragraph 19]:

"... for my part I see no reason why, other things being equal, [the authority] should not change their mind. There is often in these questions no blindingly right answer. Different councillors may take a different view, there may be local elections, it may be that after the making of the order but before any publicity is made an objection comes in spontaneously from a Parish Council pointing out a number of reasons why the order should not be made. In those circumstances I can see no reason why one should construe this Act of Parliament in such a way as to put the authority into a straitjacket where it must continue the process just because it has started it." (Underlining added.)

3. The judge is clearly ruling that though the authority's officers may be quite right in their assessment that the triggering-criteria are satisfied, expressions of opinion, though of necessity subjective, by persons more locally connected with the situation (and he expressly singles out the Parish Council, recognizing it to be an elected body capable of reflecting public opinion), can properly be weighed against the view, sound in legal terms though it may be, taken by the authority or its officer.

4. In *Hargrave*, the objections included: that it was an ancient footpath; that the new route was longer; and that the new route was likely to be muddier. On behalf of the applicant for the orders, counsel (Mr Peter Birts QC) argued that the authority's decision not to make the order was irrational, when those considerations were weighed against the number of expressions of support for the order. Lord Justice Schiemann ruled otherwise. In paragraph 28 of the judgment, he said:

"The alternative submission made by Mr Birts was that the decision not to submit the order was perverse or irrational. He points out that there were a number of arguments in favour of confirming the order. So there are. I set them out at the beginning of this judgment. He submits that the arguments against making the order were not as strong. The arguments were that it was an ancient footpath, that the diverted footpath would be longer than the undiverted footpath and that it would be muddier than the undiverted footpath. He points out that judging at any rate by the number of people who took the trouble to write, there was much local support for the confirmation of the order. All these are fair points.... But the fact that a decision to go one way would not have been perverse does not carry with it the implication that a decision to go the opposite way therefore is perverse. In my judgment, in the present case a decision either way would have been lawful. We are here in territory where reasonable persons can differ." (Underlining added.)

5. We are not, as the Parish Council, presuming to say (i) that since we are the Parish Council our view should prevail; nor do we say (ii) that since it is an ancient footpath the authority has no option but to leave it where it is, nor do we say (iii) that because it is longer it is made substantially less convenient. But we do say that the authority should weigh our view properly in the balance, which it has not done: instead, it has written our view off on the basis that, since the view can be taken that statutory criteria can be said to have been met and that the effect on public enjoyment is not (in the view of the authority when they do not have the benefit of the view of the Parish Council) significant, there is no scope whatsoever for entertaining the view that the order should not be made, even where it is the Parish Council which articulates that view.

6. Read against the provisions of the statute and against those passages from *Hargrave*, that is the wrong approach. We ask the Council to have proper and greater regard to our views. We ask that because:

(i) we are the elected Parish Council, and Parliament clearly regards the opinions of Parish Councils as of some importance in highway matters: as evidenced by the fact that various parts of the Highways Act 1980 and other statutes give Parish Councils certain specific powers and functions in relation to them. For example, section 130(6) of the 1980 Act empowers Parish Councils to *require* highway authorities to take proceedings

in respect of obstructions; sections 43 and 50 empower Parish Councils to undertake maintenance of footpaths, bridleways or restricted byways; section 30 empowers us to create new highways by agreement. Section 27 of the Countryside Act 1968 empowers Parish Councils to insist to the highway authority that a particular footpath, bridleway, or byway be signposted where it leaves a metalled road. We submit that this shows that Parliament recognizes that the views of Parish Councils are material considerations to be taken into account by highway authorities in matters of highway management, on the footing that councillors at parish level can be better informed than the highway authority itself about such matters.

(ii) When an order under section 119 of the Highways Act 1980 is made, Parliament has prescribed it that Notice must be served on the Parish Council—Schedule 6 Paragraph 1(3)(ii). That is a reasonable indication that Parliament treats the view of the Parish Council as germane to such issues.

(iii) *Hargrave* confirms that. Schiemann LJ clearly contemplates that the view of the Parish Council as to the effect on public enjoyment is a matter to be taken into consideration. He acknowledged that often in these matters 'there is no blindingly right answer'. He implied that an objection from a Parish Council can prevail against the initial view taken by the highway authority. By not upholding the applicants' submission that it was irrational not to make an order on the basis that the objectors had advanced arguments only to do with the antiquity of a path, or other heritage-related factors, he showed that these matters do have their relevance. And he said that this is 'territory where reasonable persons can differ' in their views.

7. That being so, we ask the highway authority to reconsider our objection and give it greater weight. On the wording of the statute a decision to make an order might be said to be reasonable, but then our objection is also reasonable. As the most locally-elected body which has on it persons who use the path daily or frequently, we submit we are better-placed than anyone to comment on subtler effects of diversion less likely to be appreciated by persons not resident in the area, including, we dare say, council officers who visit the area relatively rarely, and who in making their recommendations will not necessarily be at all aware of all the nuances relating to a particular proposal. It is clear from the words of the judge in *Hargrave* that this kind of factor is exactly the sort of factor likely to be pointed up by the Parish Council. Anybody can tell if a diversion is longer, or shorter, than the existing route; anybody can tell whether it is of better or worse gradient. There would be no point in consulting the Parish Council if those were the only considerations, since (if that was all that mattered) the consultation would result in a response from the Parish Council that was a mere duplication of the highway authority's own report.

8. Our view here is not that the diversion is less convenient. But one of the pleasurable perceptions of walking a path derives from knowing that it has about it an element of history; that it has been trodden by many generations of ancestors or others from a particular community; that it has been the public's 'desire-line' for centuries through being the shortest or most natural route between two points; that it is part of a nexus of paths put in place through usage many years ago.

This section of the path is in a Conservation Area and is a continuation of a path/road system that was formed as part of Hinton Blewett's medieval 'planned' village layout.

This ancient planned layout of paths and tracks were the only means by which earlier inhabitants were able to connect with neighbouring farms, the Church, the village green, the Manor, the Rectory and other villages and settlements beyond, the significance of which would be lost if this definitive path was to be diverted. The path is immediately adjacent to all the aforementioned. The Parish Council along with other residents feel that this network of paths in and around Hinton Blewett are part of what makes the village special, historically, to present day inhabitants and who it is felt have a duty to preserve it for future generations. There had better be good reason to break that thread of continuity.

It may be that here it would afford a measure of privacy to an incomer with no perception of the path's historical significance; but then, many hundreds of houses and cottages in Bath & East Somerset have paths, namely the pavement of some road, going past their windows. Many a village high-street (e.g. Temple Cloud, Bishop Sutton, East and West Harptree) is fronted by cottages which have no front-gardens and into whose windows pedestrians on the pavement can see, but nobody thinks this an oppressive intrusion or campaigns that the roads be closed. On the other hand, here an incoming individual will benefit, both from the privacy and from the increase in the value of his house, at the expense of the many members of the public, present and future, who will lose both the historical connection and the general amenity of the path, and at the expense to the public purse, out of which will have to be borne the cost of a public inquiry if the order is made. This use of public funds for private gain in the face of opposition from the elected Parish Council is questionable.

9. For the reasons connected with heritage and enjoyment, the Parish Council continues to oppose the order and regrets that it will take the matter to public inquiry in the event of an order being made. We therefore ask the authority to reconsider its report by giving proper attention to the opinion of the Parish Council, instead of disregarding it on account of it not according with the recommendation in the authority's report.

Yours sincerely,



Nigel Scutt
Clerk, Hinton Blewett Parish Council

Chairman: Liz Brimmell, Abbots Barn Cottage, Hinton Blewett, Bristol BS39 5AL
Tel: 01761 453926. Email: EBrimmell@btinternet.com

Parish Clerk: Nigel Scutt, Laburnum Cottage, Main Road Temple Cloud, Bristol BS39 5BH.
Tel: 01761 452162 Email: hintonblewettpc@aol.com

Graeme Stark

From: JohnIves [johnives@blueyonder.co.uk]
Sent: 25 May 2010 15:04
To: Graeme Stark
Cc: Hinton Blewett Parish Council
Subject: abbotts barn farm

Dear Graeme

Given recent telecons I supposed I had better formally register an objection to this application, although I can always withdraw later on. While I clearly need to know a bit more about the history of the case my initial thoughts lean towards the expediency of the order making test i.e. if anything this will be a political decision

Regards

John R. A. Ives

Local Correspondent
Open Spaces Society
North Somerset and B&NES
55 Glebe Road
Long Ashton
BRISTOL
BS41 9LJ
01275-543198
(Please excuse any minor "typos" I am somewhat dyslexic)

Have you visited our new website yet? www.oss.org.uk

From: Graeme Stark [mailto:Graeme_Stark@BATHNES.GOV.UK]
Sent: 26 May 2010 13:21
To: 'JohnIves'
Subject: RE: Abbots Barn Farm

Dear John

Thank you for the clarification.

With regard to the Parish Council's comments, I should state that their response to the informal consultation was reproduced in full, and each of the points raised were discussed, in my report to the Regulatory (Access) Committee. The Committee considered the response when deciding whether to make an order and although the Parish Council were informed that they could attend and speak at the Committee meeting, they declined to do so.

I will be in touch again with details of the Regulatory (Access) Committee meeting where objections to this Order will be considered.

Regards,

Graeme.

HINTON BLEWETT HISTORY GROUP

27th May 2010,

Mr G. Stark,
Bath & North East Somerset,
Environmental Services, Floor 2,
Riverside, Temple Street,
Keynsham,
Bristol BS31 1LA

Dear Mr Stark,

Diversion of definitive PRoW CL12/9 at Abbots Barn Farm, Hinton Blewett

The Hinton Blewett History Group always has concerns over the re-routing of any footpath. One can learn a lot about the history of a settlement from the alignment of footpaths within the local network of routeways.

Abbots Barn (farm) is a well documented, historic property that was associated with Keynsham Abbey which was founded in the 12th century. This section of the footpath is therefore within an area of great historical significance.

The footpath was always outside the curtailage of the farmhouse and its farmyard. Over recent decades the curtailage of the house has been considerably extended engulfing the route of the path.

The distance of this path from the house is still sufficient not to pose a privacy issue. However, the applicant chose to locate a swimming pool alongside the path.

By highlighting the historical issues that concern the History Group it is hoped that the committee will appreciate the heritage importance of the path when making their decision.

Yours sincerely,

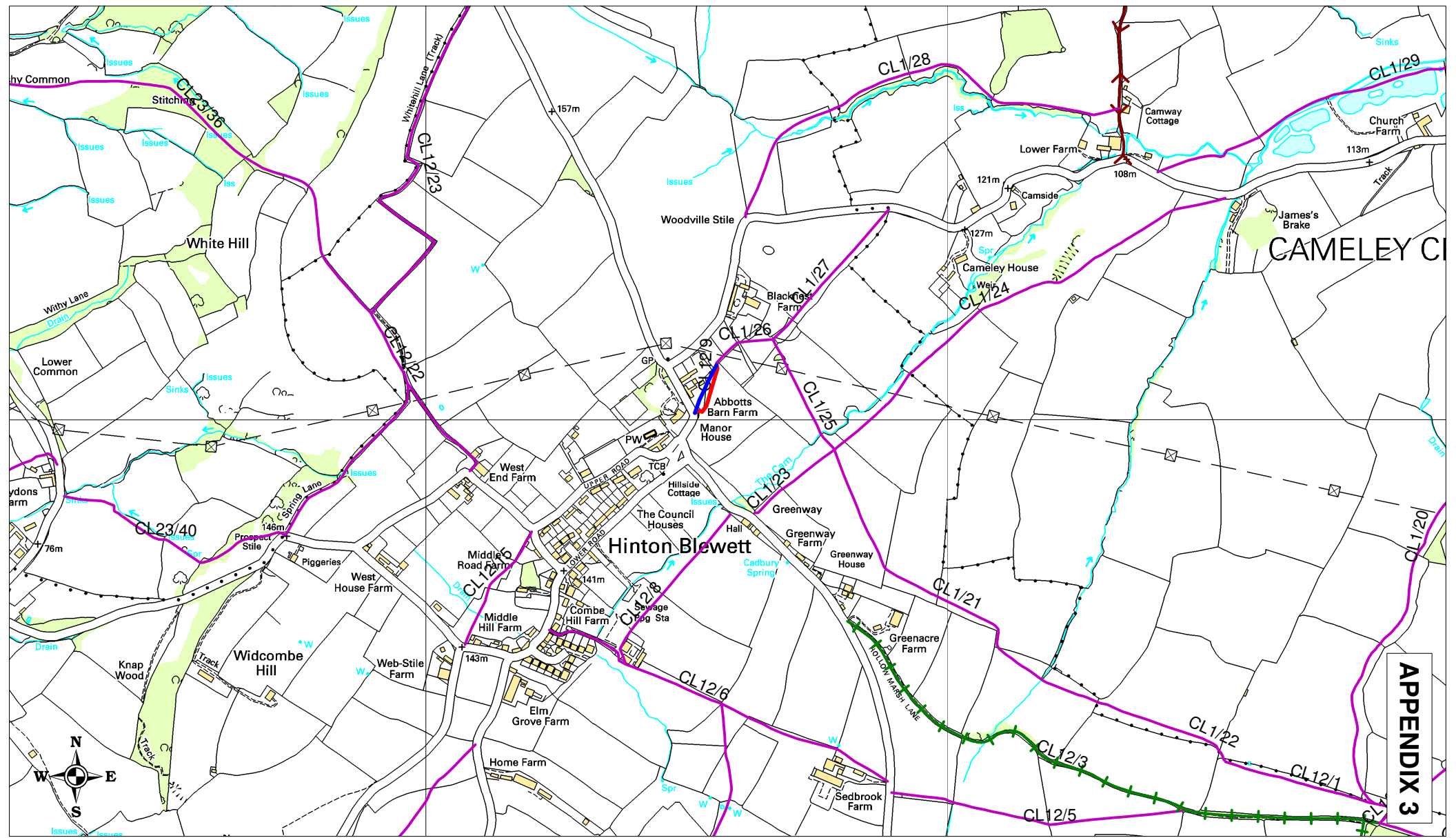
R Walker (Mrs),
On behalf of Hinton Blewett History Group,
Church Cottage,
Hinton Blewett BS39 5AN

Public Right of Way in Hinton Blewett

Scale 1:10,000

- Unaffected public footpath —
- Unaffected public bridleway —+—+—+—+—+—+—
- Unaffected BOAT ←→←→←→←→←→

- Footpath to be created —
- Footpath to be stopped up —



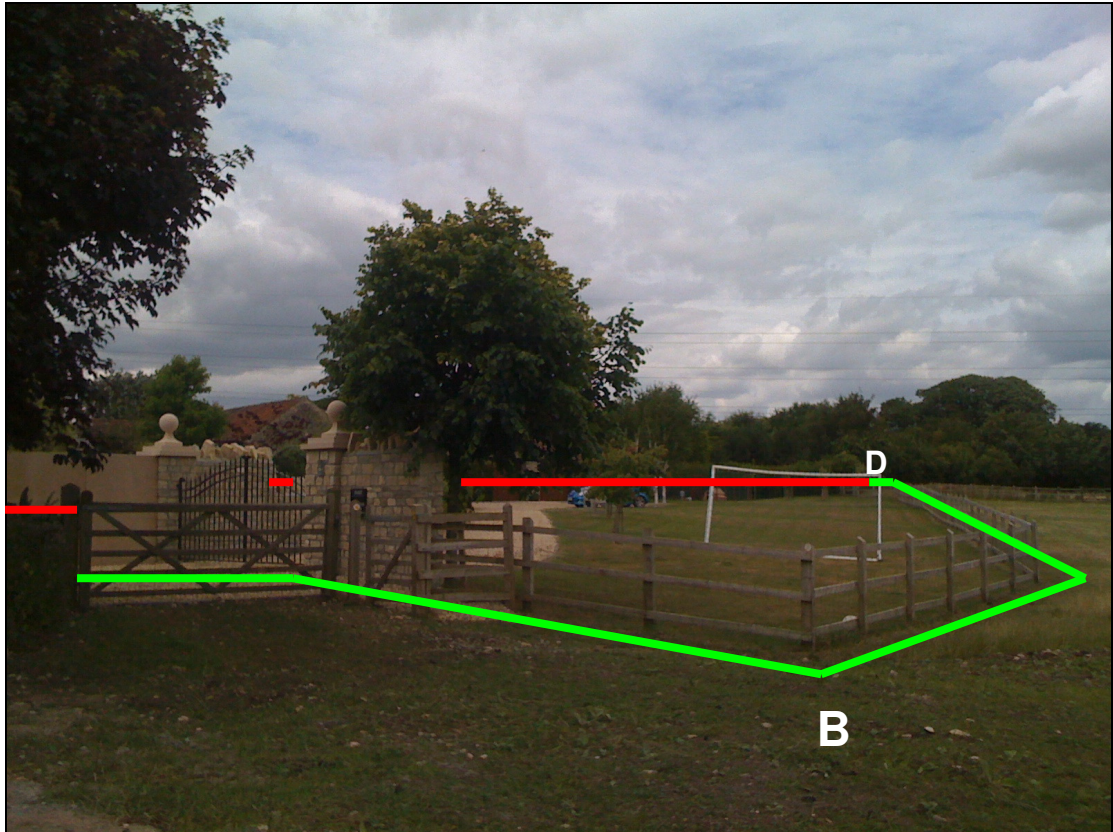


Fig 1: View from near point B looking northeast

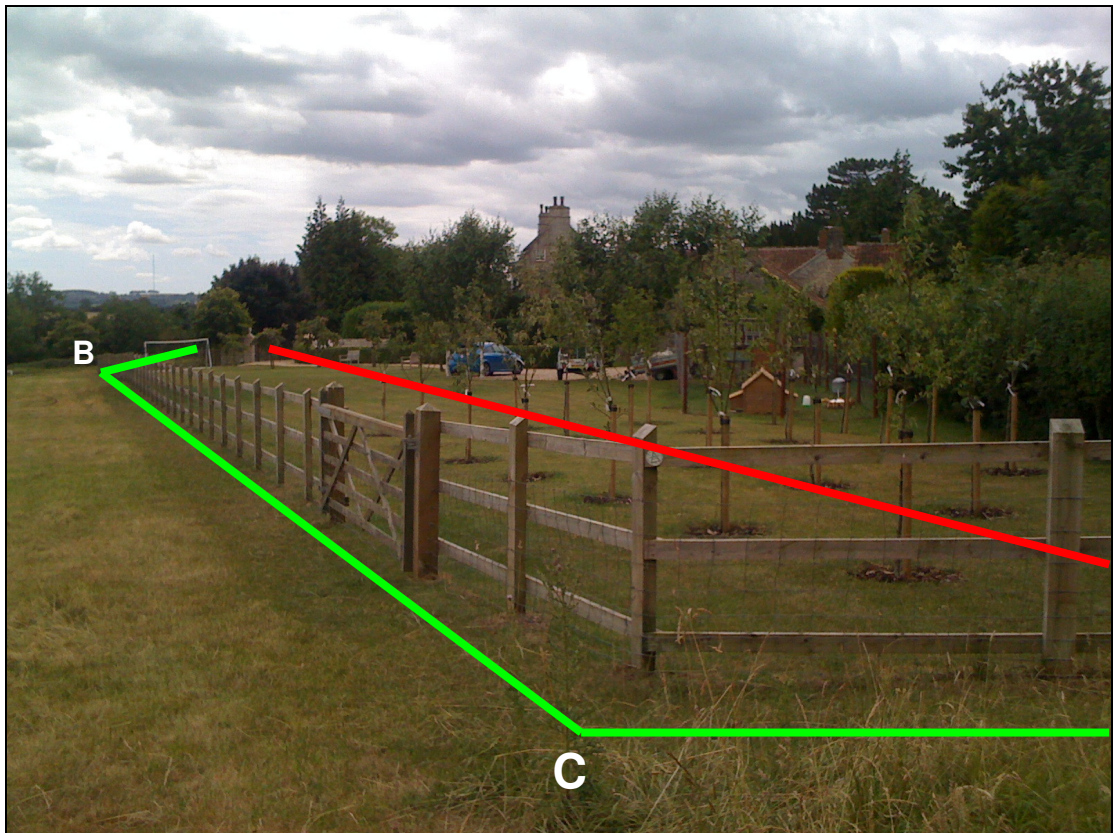




Fig 2: View from Point C looking southwest

Approx. line of Existing Footpath = 

Approx. line of Proposed Footpath = 

Public Rights of Way Network Alteration Decision Making Risk Assessment

This form is designed to be used during the processing of an application (external or internal) for a Public Path Order, Public Path Creation Agreement or other similar process. The assessment will be carried out by PROW Staff, with external advice or assistance as necessary, prior to the determination of the application and should take into account any proposed mitigation measures.

Note: The form may also be used in considering the impacts of a Definitive Map Modification Order although it should not influence the determination in these cases but rather should highlight issues that the Council would need to address should an order be confirmed.

For further guidance see: http://intranet/need_to_know/auditriskmgt/riskman/Pages/decisionmaking.aspx

1. Description of alteration proposed

Diversion of a section of public footpath CL12/9 near Abbots Barn Farm.

2. Significant risks envisaged if the proposed order and related work is not made and confirmed.

Risk Description (Cause & implication(s))	Probability	Impact
Enforcement action to make Existing Footpath open and available	Unlikely	Negligible

3. Significant risks envisaged if the proposed order and related work is made and confirmed and what action will be taken to manage these risks?

Risk Description (Cause & implication(s))	Probability	Impact	Action
Judicial Review	Extremely Unlikely	Moderate	None

4. Further Comments

None.

Print Name: Graeme Stark
Job Title: Mapping Officer
Date of Assessment: 28/06/2010

Public Rights of Way Network Alteration Equalities Impact Assessment

This form is designed to be used during the processing of an application (external or internal) for a Public Path Order, Public Path Creation Agreement or other similar process. The assessment will be carried out by PROW Staff, with external advice or assistance as necessary, prior to the determination of the application and should take into account any proposed mitigation measures.

1. Description of alteration proposed

Proposed diversion of a section of public footpath CL12/9 near Abbots Barn Farm.

2. Assessment of impact of proposal - including any mitigation planned and comparison with existing situation where appropriate

		Impact or potential impact (negative, positive or neutral)
2.1	Gender – identify the impact/potential impact on women, men and transgender people	Neutral
2.2	Disability - identify the impact/potential impact on disabled people (ensure consideration of a range of impairments including visual and hearing impairments, mobility impairments, learning disability etc)	Neutral
2.3	Age – identify the impact/potential impact on different age groups	Neutral
2.4	Race – identify the impact/potential impact on different black and minority ethnic groups	Neutral
2.5	Sexual orientation - identify the impact/potential impact on lesbians, gay men, bisexual and heterosexual people	Neutral
2.6	Religion/belief – identify the impact/potential impact on people of different religious/faith groups and also upon those with no religion.	Neutral

3. Further Comments

None.

Print Name: Graeme Stark
Job Title: Mapping Officer
Date of Assessment: 28/06/2010