

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB-COMMITTEE

DATE OF MEETING: 26TH JULY 2017

SUBJECT OF REPORT: PROPOSED DIVERSION OF FOOTPATH LA 19/50
AND PART OF FOOTPATH LA 19/48

TOWN OR PARISH: WINFORD

OFFICER/MEMBER PRESENTING: PENNY PRICE

KEY DECISION: NO

RECOMMENDATIONS

- i) That the Committee approve the submission of 'North Somerset Council (Footpath LA 19/50 and part of Footpath LA 19/48, over land between Kingston Lane and Market Place, Winford) Public Path Diversion Order No. 2 2017' to the Secretary of State for Environment, Food and Rural Affairs with a request for confirmation.
- ii) That the Committee approve the council's promotion of the Diversion Order in any subsequent proceedings

1. SUMMARY OF REPORT

Further to there being no objections at the pre-order stage, the Director of Development and Environment's authorisation was given on 26th January 2017 to make a Public Path Diversion Order under Section 119 of the Highways Act 1980, for Public Footpath LA 19/50 and part of Public Footpath LA 19/48 within Winford Parish, because it appeared to the authority that, in the interests of the owners of the land crossed by the footpaths and of the public, it is expedient that the line of the paths should be diverted.

There is one outstanding objection to part of the proposed diversion following formal order consultation and, as the council cannot confirm an opposed Order itself, Committee approval is now sought for the Order and objections to be submitted to the Secretary of State for Environment, Food and Rural Affairs, with a request for confirmation; and for the council to promote the Order in any subsequent proceedings.

A scanned copy of the Order/Public Notice is attached to this report at Appendix 1. The Order Map No. PPO 168 shows the existing routes with bold continuous lines between points A-B-C and points C-D; and the proposed routes with bold broken lines between points F-G-H and C-E.

2. BACKGROUND

This order seeks to divert Public Footpath LA 19/50 and part of Public Footpath LA 19/48 in the following manner:

PUBLIC FOOTPATH LA 19/50

from: the southern side of Kingston Lane at point A (grid reference ST 53560 65537) running in an east, south easterly direction for approximately 55 metres and crossing through the Parish Council's composting centre to point B (grid reference ST 53609 65512) and then running in a generally east, south easterly direction for approximately 194 metres passing through a redundant tennis court, to point C (grid reference ST 53763 65397);

to: a footpath running from a pedestrian gate at point F (grid reference ST 53734 65555) in Walton Crescent, in a generally east, south easterly then generally south, south easterly direction for approximately 35 metres to a kissing gate at point G (grid reference ST 53762 65537) and then running in a generally southerly direction for approximately 12 metres to point H (grid reference ST 53763 65524);

and PUBLIC FOOTPATH LA 19/48

from: point C (grid reference ST 53763 65397), running in a generally south, south westerly direction for approximately 126 metres to point D (grid reference ST 53744 65273);

to: a footpath running from point C (grid reference ST 53763 65397) in a generally east, south easterly then generally south, south easterly, then generally south, south westerly direction for approximately 161 metres to point E (grid reference ST 53800 65257).

The two diverted sections will use the existing stone/dust path surface and have a width of 2.5 metres. The diversion order makes provision for a pedestrian gate at point F and a kissing gate at point G.

The reasons given for the diversion proposals are as follows:

In around 2000, a 390 metre stone/dust path was created linking Market Place to the new housing development on the former Winford Hospital site. At the time, there were proposals to divert the existing Public Rights of Way onto this route but it would appear the developers never submitted a formal diversion application. As a result, only 180 metres, less than 50%, of the route is a legally recorded Public Right of Way.

In the intervening years the public have used the stone/dust path in preference to the definitive routes (Public Footpaths LA 19/50 and part of LA 19/48). As a consequence, these paths have largely fallen into disuse and, in places are impassable. Particularly difficult sections are the northwest end of Public Footpath LA 19/50 (Points A to B), where it passes through the Parish Council's composting centre, the boundary at Point B and the corner of a former tennis court between points B and C. It is proposed that this route be diverted to follow the used stone/dust track from point F, at Walton Crescent, to join Public Footpath LA 19/48 at Point H.

The current part of Public Footpath LA 19/48 between Points C to D is available via a stile near Point C and it is proposed to divert this section onto the existing stone/dust path from Points C to E.

It is felt that diverting these paths to follow the stone/dust path would offer legal protection to this well used route, safeguarding it for future public use thereby benefitting the public. It would also benefit both landowners, allowing safe management of the public composting site and the grazing of stock.

It should be noted that the local representative of the Open Spaces Society ('OSS') does not object to the proposed diversion of part of LA 19/48, from points C to D, to points C to E.

3. POLICY

The maintenance of the Definitive Map should be considered as part of the management of the public rights of way network and so contributes to the corporate plan "Health and Wellbeing" and "Quality Places".

4. DETAILS

i) Legal context

The Order complies with the various provisions of Section 119 of the Highways Act 1980 and the relevant sections are extracted below:

Section 119 (1)

This deals with the making of the Order and states that:

"Where it appears to the council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or special road) that, in the interests of the owner, lessee or occupier of the land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line should be diverted (whether on to land of the same or of another owner, lessee or occupier) the council may" divert the path.

Section 119 (6)

This deals with the confirmation of the Order and states that:

"The Secretary of State shall not confirm a public path diversion order, and a Council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they

are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which:

- a) the diversion would have on public enjoyment of the path or way as a whole;
- b) the coming into operation of the order would have as respects other land served by the existing right of way; and
- c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it ...“

ii) Objection

Following Order consultations, there is an outstanding objection from the local representative of the OSS, which the council has not been able to resolve during further communication; necessitating this report.

SUMMARY OF OBJECTION POINTS RAISED BY LOCAL REPRESENTATIVE OF THE OSS, TO ORDER CONSULTATIONS

**It should first be noted that the OSS representative states:
“There is no objection to the diversion of section C to D.”**

(the Officer has separated the paragraphs of the text into numbered rows, for ease of reference to these summarised comments in the report)

1.	Although the footpath between A-C has fallen into disuse, the OSS representative believes this is more likely to be due to inadequate maintenance than the provision of a new stone track between F and H.
2.	It would have been an opportunity to increase the footpaths in the area by the addition of F to H and not a reduction in overall footpaths lengths. The OSS representative feels that a great effort should be made in retaining LA 19/50 instead of removal of this section and they also urge North Somerset Council to work with the respective landowners and Parish Council to remove the temporary obstructions from the footpath to allow the public to take full benefit from this long established footpath.
3.	Whilst they do acknowledge that Public Footpath LA19/5 appears to have been obstructed for some time, looking at old maps it appears that the obstructions in comparison to the age of the footpath can still be regarded as a temporary obstruction and this should not cloud the issue.
4.	They state that the proposed replacement is significantly longer to the same destination than the original footpath.

5.	The footpath ends at the cricket pitch and associated pavilion which is a valuable local amenity and the proposed replacement would discourage local residents from watching and participating in sport.
6.	Grazing is also a compatible activity for footpaths.
7.	The OSS representative states they therefore believe that this proposal is a significant disbenefit to the public and they wish their objection to remain.

COMMENTS OF WINFORD PARISH COUNCIL FOOTPATHS REPRESENTATIVE, IN RESPONSE TO THE PARISH BEING ADVISED OF THE SUMMARISED OBJECTION POINTS

The comments state:

“I would certainly wish to appeal quoting local knowledge and commitment to maintaining the local footpaths by Winford Parish Council who have an annual footpath budget of £2,000.”

And the comments list the following numbered “Important points”, which the North Somerset Council officer has displayed in tabular form, for ease of reference in this report:

1.	The local clay soil quickly turns to mud in wet weather requiring walkers to wear Wellingtons or waterproof boots. Therefore, the only way to walk between Winford village and High Winford, Long Cross or the Vee Lane Playground throughout the year wearing normal footwear is via this urban link. The alternative routes along the narrow main roads without pavements i.e. Barrow Lane or Felton Lane are too dangerous to even consider.
2.	It is vital that this urban link, which is used by many residents every day is given proper legal protection.
3.	The previously inadequately maintained right of way from G, north easterly to Kingston Lane, has been re-instated with the installation of metal stiles and is now part of a valuable country walking route linking up with other footpaths at the lower end of Kingston Lane FPs 19/64 or 19/66 & 19/67.
4.	Anyone wishing to walk to the Cricket Club would walk via the continuation of the urban link along Walton Crescent.
5.	There is no obvious cross country walking route from A that would encourage walking from C to A.

OFFICER COMMENTS:

1.	<p>The local representative of the OSS does not object to diverting part of Public Footpath LA 19/48 from points C to D, to points E to E. Their objection is only one half of the Order; the diversion of Public Footpath LA 19/50.</p>
2.	<p>This Public Path Diversion Order meets the requirements of Section 119 of the Highways Act 1980 in that, in the interests of the owners of the land crossed by the footpath and of the public, it is expedient that the line of the path should be diverted.</p> <p>With regards the tests to be satisfied for confirmation of the Order, officers are satisfied that the diversion will not be substantially less convenient to the public and that it is expedient to confirm the order as the diversion will not have a detrimental effect on public enjoyment of the Public Footpath as a whole.</p> <p>There would be no detriment to the land served by the existing and proposed Public Footpaths and both landowning parties, including the Parish Council, are in support of the proposals.</p>
3.	<p>There have been no objections from the local representative of the Ramblers Association, or from the nearby local residents at High Winford or the villagers in Winford or Felton.</p>
4.	<p>The proposed routes will ensure safe year-round passable Public Footpaths, for residents wishing to get between Winford Village and the residential area at the former hospital site. Any seasonal conditions should not cause any detriment to these traffic-free proposed routes.</p>
5.	<p>The proposed LA 19/50 diversion route between points F to H is an important route for villagers and securing it as a Public Right of Way is a priority for the Parish Council and villagers alike.</p>
6.	<p>The existing LA 19/50 route between points A to C has long been obstructed and, whilst appearing to link to the cricket club/sports pavillion, it is a poorly connected path opening onto the narrow 'Kingston Lane'. This lane running west is a regularly-used vehicular link between Winford, Felton and the A38. As a consequence Kingston Lane is not a pleasant route for walkers. It is understood that longer distance walkers and villagers from Felton and Winford tend to follow Public Footpath LA 19/48 which runs parallel to Felton Lane through pasture and avoids the roads, therefore the proposed diverted route is seen as a safer and suitable alternative.</p>

7.	<p>If it is appreciated that, to get between the existing points A-B-C (approximately 249 metres), it would be a longer subsequent route to get between the same start/finish points A-C if the path is diverted (via Kingston Lane, Walton Crescent, points F-G-H-C; approximately 368 metres).</p> <p>However, Officers do not accept that the proposed diversion of this existing route between points A and C will discourage local residents from watching and participating in sport.</p> <p>For the reasons stated at point 6 above, it is considered the proposed route is a safer and suitable diversion and, in contrast to the existing obstructed route, the resulting new route will give a clear unobstructed route towards the cricket club/sports pavilion, with the section along the Public Footpaths providing a year-round footpath surface.</p> <p>This is therefore seen as an improvement, rather than hindering walkers, over the existing route.</p>
8.	<p>Through the council seeking resolution of the existing legal line being obstructed, the landowner has submitted an application to formally divert part of the Public Footpath and the applicant is to pay the council's normal application costs. As officers consider that has been expedient to make this Public Path Order and that it will also be so to confirm it, it is hoped that this will address the matter of the obstructed route.</p>
9.	<p>The objector's statement that grazing is a compatible activity for footpaths is accepted, however it is open to a landowner to apply to divert a footpath to better manage their land and the existing route (as well as being obstructed) cuts diagonally across land, as opposed to following field boundaries.</p> <p>Although Public Rights of Way in the countryside are used by many families, the precise nature of the routes here include links between the main Winford village and the separate residential estate to the north, therefore families may need to use the diverted route to access village services, including schools, meaning it will benefit the route in this case, to serve a more direct purpose, away from grazing animals.</p>

10.	<p>Section 119 of the Highways Act 1980 makes provision for a landowner to apply to divert a Public Right of Way on their land. Officers are satisfied that both the proposed diversions contained in this Order will enable both landowning parties to manage their land, whilst securing the direct routes the public are using as Public Footpaths; which will be added to the Definitive Map.</p> <p>The officer has further advised of the nature of use of the proposed diverted routes, together with how the diversions should benefit the public.</p> <p>Therefore, for the reasons stated above, officer opinion is that it is expedient that the order should be confirmed and the routes diverted.</p>
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5. CONSULTATION

Formal order consultations were undertaken (including landowners/neighbouring landowners, any interested parties/local user groups and utility companies who had commented at the pre-order consultation stage, the six statutory consultees, Winford Parish Council, the local ward councillor). In addition, copies of the Public Notice and Order Map were placed at the site and on the council's website, with the Public Notice also appearing in the Western Daily Press.

As there is one outstanding objection which necessitates this report to Committee, the objection points, Winford Parish Council comments to these and the officer's comments are summarised at section '4. Details' of this Report, above.

6. FINANCIAL IMPLICATIONS

Both the applicants and Winford Parish Council, as landowners, are contributing towards the council's normal application charges. The path furniture mentioned in the order has already been installed at the site. If the Order is submitted to the Secretary of State for confirmation, none of the associated and subsequent costs can be recovered, so these would be borne by the Council.

7. RISK MANAGEMENT

If this Diversion Order is submitted to the Secretary of State, there are three methods which an Inspector can use to determine the matter: written representations; a Hearing or a Public Inquiry. The Objectors would be invited to state which method they wish to be followed, the Council have no say in deciding.

8. EQUALITY IMPLICATIONS

Public rights of way are available for the population as a whole to use and enjoy irrespective of gender, ethnic background or ability and are free at point of use.

9. CORPORATE IMPLICATIONS

Any changes to the network will be reflected on the GIS system which forms the basis of the relevant corporate records.

10. OPTIONS CONSIDERED

The options to be considered by this Committee are:

- i) to approve the submission of 'North Somerset Council (Footpath LA 19/50 and part of Footpath LA 19/48, over land between Kingston Lane and Market Place, Winford) Public Path Diversion Order No. 2 2017' to the Secretary of State for Environment, Food and Rural Affairs with a request for confirmation.
- ii) and to approve the council's promotion of the Diversion Order in any subsequent proceedings.

OR

- iii) to abandon the Public Path Diversion Order and advise the applicant, having regard to the risk management factors at section 6, above.

AUTHOR

Penny Price
Access Support Officer
Public Rights of Way (Natural Environment)
Tel. 01934 427467

BACKGROUND PAPERS

Public Rights of Way Section File PPO 168

NOTICE OF MAKING OF AN ORDER

HIGHWAYS ACT 1980
NORTH SOMERSET DISTRICT COUNCIL
(FOOTPATH LA 19/50 AND PART OF FOOTPATH LA 19/48,
OVER LAND BETWEEN KINGSTON LANE AND MARKET PLACE, WINFORD)
PUBLIC PATH DIVERSION ORDER NO. 2 2017

The above Order, made on 27th January 2017, under section 119 of the Highways Act 1980, will divert Public Footpath LA 19/50 and part of Public Footpath LA 19/48 in the Parish of Winford within the District of North Somerset as described below:

Public Footpath LA 19/50

from: the southern side of Kingston Lane at point A (grid reference ST 53560 65537) running in an east, south easterly direction for approximately 55 metres and crossing through the Parish Council's composting centre to point B (grid reference ST 53609 65512) and then running in a generally east, south easterly direction for approximately 194 metres passing through a redundant tennis court, to point C (grid reference ST 53763 65397);

to: a footpath running from a pedestrian gate at point F (grid reference ST 53734 65555) in Walton Crescent, in a generally east, south easterly then generally south, south easterly direction for approximately 35 metres to a kissing gate at point G (grid reference ST 53762 65537) and then running in a generally southerly direction for approximately 12 metres to point H (grid reference ST 53763 65524);

and part of Public Footpath LA 19/48

from: point C (grid reference ST 53763 65397), running in a generally south, south westerly direction for approximately 126 metres to point D (grid reference ST 53744 65273);

to: a footpath running from point C (grid reference ST 53763 65397) in a generally east, south easterly then generally south, south easterly, then generally south, south westerly direction for approximately 161 metres to point E (grid reference ST 53800 65257).

The proposal is shown on Order Map No. PPO 168, with the existing routes indicated by bold continuous lines and the proposed routes indicated by bold broken lines. The two diverted sections will use the existing stone/dust path surface and have a width of 2.5 metres.

Copies of the Order and Order map have been placed and may be seen free of charge at the Reception desk, North Somerset Council Offices, Castlewood, Tickenham Road, Clevedon, BS21 6FW from 9.00am to 4.30pm Mondays to Thursdays and 9.00am to 4.00pm on Fridays, or may be viewed on the Council's Web site (at the address: www.n-somerset.gov.uk/notices). Copies are also available for inspection at Winford Post Office Stores, 11 High Street, Winford, BS40 8EH during normal opening hours (Mondays–Fridays 8am to 6pm, Saturdays 8am to 4pm and Sundays 8am–12noon). A copy can be obtained from North Somerset Council at the price of £6.50 if collected and £7.80 if posted out.

Any representations about or objections to the Order may be sent in writing to the Director of Development and Environment, Natural Environment Team, Streets and Open Spaces, North Somerset Council, Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ not later than **3rd March 2017**, quoting the reference **PAP/PPO 168**. Please state the grounds on which they are made.

If no such representations or objections are duly made, or if any so made are withdrawn, North Somerset District Council may confirm the Order as an unopposed Order. If the Order is sent to the Secretary of State for the Environment for confirmation, any representations and objections which have not been withdrawn will be sent with the Order.

Dated: 2nd February 2017

David Carter
Director of Development and Environment

North Somerset Council
 Town Hall, Walliscote Grove Road, Weston-super-Mare BS23 1UJ



Highways Act 1980
Section 119

North Somerset District Council

(Footpath LA 19/50
and part of Footpath LA 19/48,
over land between Kingston Lane
and Market Place, Winford)

Public Path Diversion Order
No. 2 2017

N P Brain
Head of Legal and Democratic Services
Town Hall
Walliscote Grove Road
Weston-super-Mare
BS23 1UJ

Ref: PPO 168

HIGHWAYS ACT 1980

NORTH SOMERSET DISTRICT COUNCIL

**(FOOTPATH LA 19/50 AND PART OF FOOTPATH LA 19/48,
OVER LAND BETWEEN KINGSTON LANE AND MARKET PLACE, WINFORD)**

PUBLIC PATH DIVERSION ORDER NO. 2 2017

This Order is made by North Somerset District 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 owners of the land crossed by the footpaths described in paragraph 1 of the order and of the public it is expedient that the line of the paths should be diverted.

BY THIS ORDER:

- 1 The public rights of way over the land situated between Kingston Lane and Market Place, Winford and shown by bold continuous lines on the Map No. PPO 168 contained in this order and described in Part 1 of the Schedule to this order shall be stopped up on the date on which North Somerset District Council certify that work has been carried out to bring the site of the new highways mentioned in Part 2 of the Schedule into a fit condition for use by the public.
2. Notwithstanding this order Wales and West Utilities shall have the following rights over the land referred to in paragraph 1 namely: they shall for the purpose of carrying out their undertaking continue to have the same rights in respect of their apparatus as they had immediately before the date on which the footpaths are diverted.
3. There shall at the end of 28 days from the date of confirmation of this order be public footpaths over the land situated between Kingston Lane and Market Place, Winford described in Part 2 of the Schedule and shown by bold broken lines on the Map No. PPO 168 attached to this order.
3. 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.

SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATHS OR WAYS

Public Footpath LA 19/50

Footpath LA 19/50 in the parish of Winford, from the southern side of Kingston Lane at point A (grid reference ST 53560 65537) running in an east, south easterly direction for approximately 55 metres and crossing through the Parish Council's composting centre to point B (grid reference ST 53609 65512) and then running in a generally east, south easterly direction for approximately 194 metres passing through a redundant tennis court, to point C (grid reference ST 53763 65397) as shown by a bold continuous line on the attached Map No. PPO 168.

Public Footpath LA 19/48

That part of footpath LA 19/48 in the parish of Winford, from point C (grid reference ST 53763 65397), running in a generally south, south westerly direction for approximately 126 metres to point D (grid reference ST 53744 65273) as shown by a bold continuous line on the attached Map No. PPO 168.

PART 2

DESCRIPTION OF SITE OF NEW PATHS OR WAYS

Public Footpath LA 19/50

A footpath running from a pedestrian gate at point F (grid reference ST 53734 65555) in Walton Crescent, in a generally east, south easterly then generally south, south easterly direction for approximately 35 metres to a kissing gate at point G (grid reference ST 53762 65537) and then running in a generally southerly direction for approximately 12 metres to point H (grid reference ST 53763 65524), as shown by a bold broken line on the attached Map No. PPO 168. The path will have a stone/dust surface and a width of 2.5 metres.

Public Footpath LA 19/48

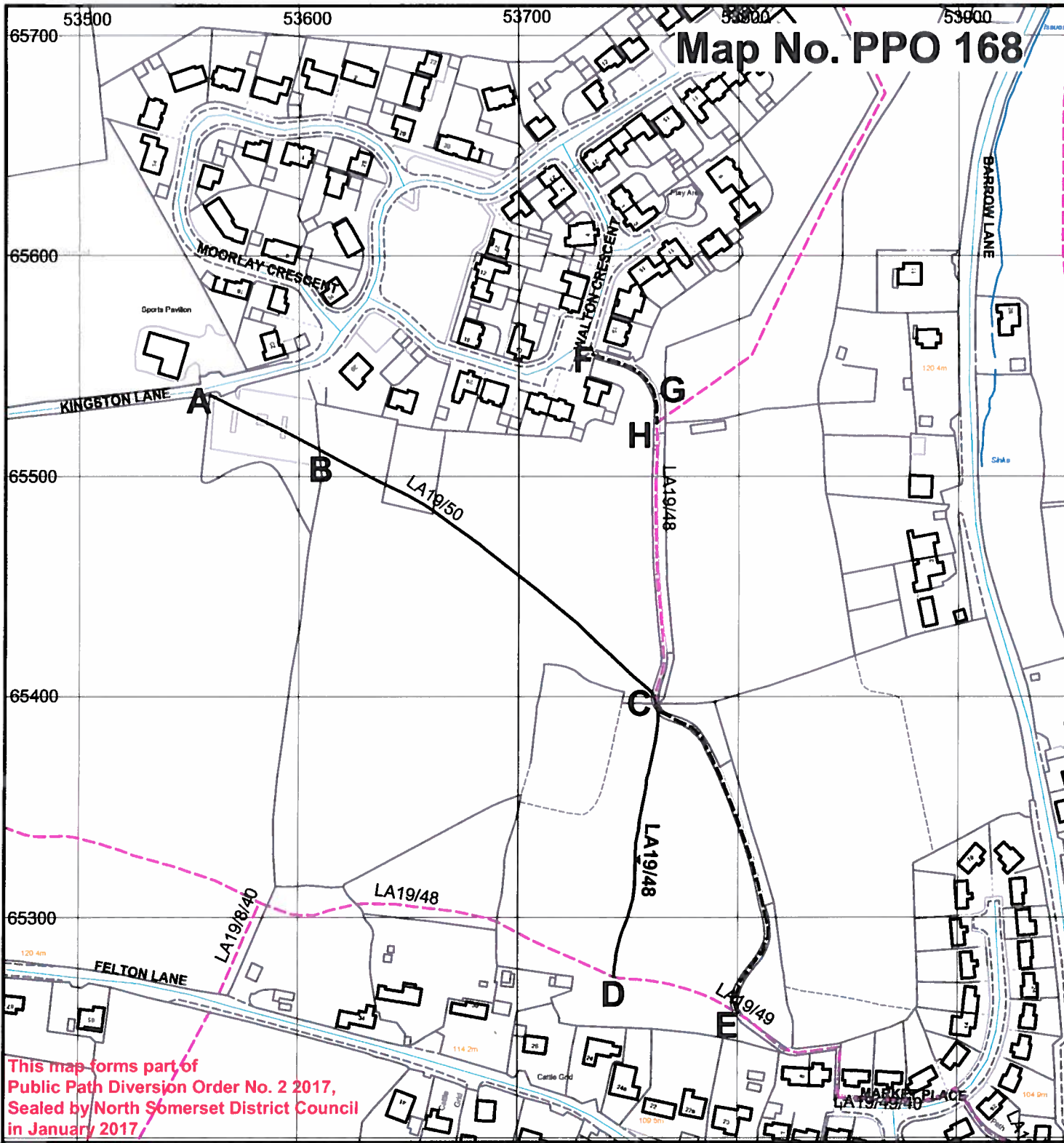
A footpath running from point C (grid reference ST 53763 65397) in a generally east, south easterly then generally south, south easterly, then generally south, south westerly direction for approximately 161 metres to point E (grid reference ST 53800 65257), as shown by a bold broken line on the attached Map No. PPO 168. The path will have a stone/dust surface and a width of 2.5 metres.

PART 3

LIMITATIONS AND CONDITIONS

Point F (Grid Reference ST 53734 65555)	Pedestrian gate
Point G (Grid Reference ST 53762 65537)	Kissing gate

The pedestrian and kissing gates specified above are to be provided to comply with BS 5709.2006 and should be considered for removal in the event that they are no longer required to prevent the ingress or egress of animals or if the land is no longer used for agricultural purposes (including forestry and the keeping of horses).



This map forms part of
Public Path Diversion Order No. 2 2017,
 Sealed by North Somerset District Council
 in January 2017

Highways Act 1980 - Section 119 North Somerset District Council

Public Path Diversion Order No. 2 2017

Public Footpath LA 19/50 and part of Public Footpath LA 19/48,
 over land between Kingston Lane and Market Place, Winford

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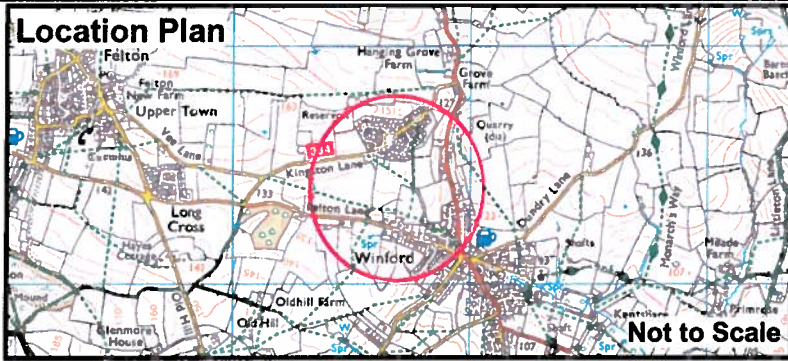


North Somerset COUNCIL

Development & Environment

Public Rights of Way
 Streets and Open Spaces
 North Somerset Council
 Town Hall
 Wallscote Grove Road
 Weston-super-Mare
 BS23 1UJ

Tel: 01934 888 802



Scale 1:2500

DATE

Date January 2017

Grid Square ST5365

Drawn by Penny Price

PATH TO BE DIVERTED

Existing ——— (A-B-C and C-D)

Proposed - - - - - (F-G-H and C-E)

Connecting - - - - - Paths

NORTH

Given under the Common Seal of North Somerset District Council the 27th day of January 2017.

THE COMMON SEAL of)
NORTH SOMERSET)
DISTRICT COUNCIL)
was hereunto affixed in)
the presence of:)

17095

A handwritten signature in cursive script, appearing to read 'W. Han'.

HEAD OF LEGAL AND DEMOCRATIC SERVICES