

North Somerset Council

Report to the Public Rights of Way Sub-Committee

Date of Meeting: 26 March 2024

**Subject of Report: PPO No 199 Highways Act 1990 Section 119
Proposed Public Path Diversion Order - Parts of footpaths LA 13/5/10 LA
13/5/20 and LA 13/6, west of Engine Lane, Nailsea**

Town or Parish: Nailsea

Officer/Member Presenting: Paul Hayward

Key Decision: NO

Reason:

The value of this decision is less than £500,000 and this decision will not have a significant impact on two or more wards in North Somerset

Recommendations

It is recommended that the Public Rights of Way Sub-Committee authorise the following:

(1) (i) the making of two Public Path Diversion Orders (PPOs) under section 119 of the Highways Act 1990, diverting those parts of Public Footpath LA 13/510, LA 13/5/20 and LA 13/6/20 as shown on the proposal maps (Appendix 1 and 2) on the grounds that it is in the public interest to do so

(ii) if no objections are made and sustained that authorisation be given for the confirmation of the PPO or;

(iii) if objections are made and sustained, that the PPOs mentioned at (1) above be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination and the council support the Orders through any subsequent procedure.

Summary of Report

North Somerset Council has received a Public Path Order application to divert part of Public Footpaths LA13/5/10, LA 13/5/20 and LA13/6/20 at the above location.

This application arises because of the applicants being granted planning permission 17/P/1250/F for a proposed development of 171 dwellings (Use Class C3 including affordable homes), open space (including children's play spaces and replacement playing fields including drainage and associated infrastructure), landscaping, sustainable urban drainage, vehicular accesses, pedestrian and cycle accesses, related infrastructure and engineering works on the site where the diversion is sought.

Pre-order consultations resulted in the receipt of two written objections, which relate to the proposed LA13/5/10, LA 13/5/20 and 13/6/20 diversions, therefore it is necessary to report the matter to Committee, to seek approval to make two Public Path Diversion Orders.

A copy of the proposal maps, 'Map No. PPO 199/1' is attached to this Report as Appendix 1 and 'Map No. PPO 199/2' is attached as Appendix 2.

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 objectives of “A Thriving and Sustainable Place” (a great place for people to live, work and visit) (a transport network which promotes active, accessible and low carbon travel) and “An Open and Enabling Organisation” (collaborate with partners to deliver the best outcomes).

Details

BACKGROUND

Further to the grant of planning permission 17/P/1250/F the applicants seek to amend the public footpaths as follows.

Part of footpath LA 13/6/20

Existing Route- A section of physically undefined footpath (LA13/6/20) running northeast from bridleway LA13/4/30 across open field, shown as A-C, connecting to LA13/6/20 running north. This footpath is located to the west of the development site boundary 17/P/1250/F as indicated on drawing P20-0001_20C (Attached at Appendix 4). Shown on Map PPO 199/1 as solid black line between points A-C, a total distance of 80m.

New route – Commencing at Point A to follow stone wall and hedgerow along boundary of development site through point B shown on 17/P/1250/F. New footpath to connect to existing LA13/6/20 at point C shown on drawing P20-0001_20C. New route to be within 8m maintained ecological buffer. Surface to be mown grass path min 2m in width. Shown on Map PPO 199/1 as a black dashed line between points A-C a total distance of 156m.

Part of footpath LA13/5/10 13/6/20 and LA13/5/20

Existing Route - A section of footpath A13/5/10 commencing at point G , across open field connecting to the northern edge of development boundary 17/P/1250/F point I , then running east across playing fields, through points J,K,L,M, footpath LA3/5/20 hedgerow boundary into adjacent field M,N and connecting to Engine Lane through kissing gate point O (Shown as G-O on drawing P20-0001_20C). Also, section of LA13/6/20 running south from point I junction with LA13/5/10 down to ditch line point D (shown as I-D on development drawing P20-0001_20C). Shown on Map PPO 199/2 as solid black lines G-O a total distance of 335m and I-D distance a total distance of 100m.

New route – Footpath LA13/5 will commence from Point G to follow existing hedge and ditch line shown on drawing P20-0001_20C towards site boundary of development 17/P/1250/F (D) to point D. Shown on Map PPO 199/2 as black dashed lines G – D a total distance of 63m.

Footpath LA13/5 will continue from point D through landscaped development to point E and connecting to Engine Lane at new vehicular junction (F). Surface to be mixture of mown grass path, hoggin path and tarmac pavement minimum 2m in width. Shown on Map PPO 199/2 as black dashed lines G – F a total distance of 236m.

We have been advised by the applicant that users of the network will also have the option of using adopted highway.

The reasons for the submission of the application are as follows:

- 1) To divert the existing route which runs across agricultural land, instead to follow the line of stone boundary wall and hedgerow located within managed ecological buffer
- 2) To divert the existing routes which run across playing fields, instead to follow routes through new development to connect with Engine Way at a new, safe junction with access to a pavement and improved visibility compared to current egress through hedgerow. Stopping up access across playing fields will reduce antisocial use of the pitches.

The applicant originally submitted their application requesting that these footpaths were diverted under section 257 of the Town and Country Planning Act 1990 Appendix 3. However, due to delays in progressing this application, the development of this site has substantially been completed, rendering section 257 unusable therefore it is necessary to progress this application through the Highways Act 1980.

The Order relating to Footpath LA13/6 would be made by North Somerset Council (“the authority”) under Section 119 of the Highways Act 1980.

The Orders sought from the committee would be in the following terms –

In relation to the Part of footpath LA 13/6/20

BY THIS ORDER:

1. The footpaths over the land shown by bold black lines on the attached map no. PPO 199/1 and described in Part 1 of the Schedule to this Order (“the Schedule”) shall be diverted as provided below.
2. There shall be created to the reasonable satisfaction of North Somerset District Council alternative highways for use as replacements for the said footpaths as provided in Part 2 of the Schedule and shown by bold black dashes on the attached map no. PPO 199/1.
3. The diversion of the footpaths shall have effect on the date on which North Somerset District Council certify that the terms of Article 2 above have been complied with.
4. Works shall be carried out in relation to the highways described in Part 2 of the Schedule: with mown grass footpath surfaces, to a width of two metres and affixing of adequate Public Footpath signage.
5. Where immediately before the date on which the footpaths are diverted there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

In relation to Part of footpath LA13/5/10 and LA13/5/20

BY THIS ORDER:

1. The footpaths over the land shown by bold black lines on the attached map no. PPO 199/2 and described in Part 1 of the Schedule to this Order (“the Schedule”) shall be diverted as provided below.
2. There shall be created to the reasonable satisfaction of North Somerset District Council alternative highways for use as replacements for the said footpaths as provided in Part 2 of the Schedule and shown by bold black dashes on the attached map no. PPO 199/2.
3. The diversion of the footpaths shall have effect on the date on which North Somerset District Council certify that the terms of Article 2 above have been complied with.
4. Works shall be carried out in relation to the highways described in Part 2 of the Schedule: establishment of macadam and hoggin footpath surfaces, to a width of two metres and affixing of adequate Public Footpath signage.
5. Where immediately before the date on which the footpaths are diverted there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

SUPPORTING COMMENTS

The owners of land adjacent to the footpaths (but not directly affected by the proposed route changes) advises, as a regular user of these paths, that they believe the new layout proposals to be a very positive advantage, which will lead to increased enjoyment of their use. They fully support the proposal and letters of consent from them are attached in Appendix 4.

OBJECTION POINTS

- i. 1st objecting party originally objected on the following grounds.

“Objection to and opposition to route of proposed diversion from the organiser of a walking group for 25 years, using most if not all the footpaths in and around North Somerset. on following grounds.

As you will be aware the only test to be met for such diversions is that it is necessary to stop-up or divert the way in order to enable the development to be carried out. In the case of both these paths I cannot see how this test is passed.

1. The original plan to divert the footpaths under Section 257 of the TCPA 1990 should be dropped.

2. Instead it is suggested that the existing meeting point of LA13/5 with Engine Lane be moved further south to the location of the proposed new pedestrian access point from Engine Lane to the housing estate (ie a few metres north of the junction of Worcester Gardens with Engine Lane).

From this new access point the footpath would be route along the new estate road to point “K” (D) and then directly west, through point “I” (G). The paths to the north of this new route being extinguished. This would resolve the Nailsea Rugby Club’s issues.

3. The section of path LA13/6 between points "A" and "B" (C) to be diverted to a field edge route from point "A" via point "A1" to point "C".

If the above proposal is accepted, then we would not raise any objections to it subject to the following conditions:

(a) The above changes are made under the Highways Act 1980. This will allow for proper public consultation as well as avoiding any debate concerning the use of the TCPA 1990 for this purpose and the current degree of the completeness of the relevant development.

(b) Proper measures are taken to construct the new path between points "M" (D) and "K" to a standard which provides an all year round surface. Observations during the past year have shown this area to be very wet and muddy. As all foot traffic under the new scheme will now be routed through this area the path surface will need to be able to cope with these conditions.

(c) Long term arrangements are put in place to ensure that the route of LA13/6 between points "K (D) ' and "A" (which will be an enclosed fenced in path) is properly maintained and kept free of excessive vegetative growth. Please see attached photo of the current state of affairs."

NSC Comment – it should be noted that the reference points mentioned above are those from a previous plan. The brackets confirm these points on the attached PPO 199/1 and PPO 199/2 map. Following receipt of this objection discussion has taken place with both the objector and the applicant to address the points raised. The proposals contained within this report have been submitted to the objector who has confirmed that they are now taking a neutral position neither consenting or objecting to the application.

ii. 2nd objecting party

From the organiser of a local horse riding/bridleways group Axbridge Bridleways Association, using most if not all the bridleways in and around North Somerset.

"I have asked for a dedication along Engine Lane. He (the applicant) has said we can use it. But He has said that the housing Association when built might decide that they don't want horses. So a dedication is paramount.

Gates within the dedication must be 5 foot.

I also asked for the eastern FP to be dedicated but he was hesitant but if cyclists can use it so can horses. You can't keep cyclists from using F/P they all do everywhere."

Not happy with the proposal as there is plenty of grass beside the supposed two Metres. There are many Bridleways of far less than 2 metres and a dedication does not I think have to have a particular width Yadley Lane. Cleeve Lane [Ridleys] we have asked for the fence to be put back!!! . I could find many more.

You clearly ask for footpaths and cycleways, on planning applications. I imagine the ramblers don't get involved. So why in a case like this did your team not think of bridleways. We have North Doves, Morgans Hill and the Engine lane to Nailsea Westend. Engine Lane use to be a very quiet Lane but with all these housing Estates, Engine Lane will become more of a rat run. These routes need some help to join them together and with respect should have included the horse together with cyclists at the time planning was

given with a 106 agreement one would imagine you agreed a 106 to cyclists using this route.

So, horses should have been included, and still could be”

OFFICER COMMENTS

The proposals comply with the various provisions of Section 119 of the Highways Act 1980:

- a. It is expedient to make both Orders, in the interests of the owners of the land or of the public.
- b. Diverting Public Footpath LA13/5/10 13/5/20 and LA13/6/20 will clearly benefit the applicants/landowners providing an unobstructed route through to Engine Lane.
- c. The proposals are not substantially less convenient to walkers.
- d. The original distance from point D on LA 13/6/20 to point O on Engine Lane is longer than the proposed diverted route D-F where LA 13/5/10 will meet Engine Lane.
- e. The walking public will also benefit as the end of the proposed route, point F on Map 199/2 is closer to footpath LA13/20/60 located in Worcester Gardens
- f. The diversion would not have a detrimental effect on public enjoyment of the paths as a whole.
- g. The coming into operation of these orders would not have a detrimental effect on other land served by the existing and proposed Public Footpaths.
- h. The applicants have advised that although the official route of the diverted path will follow route DEF on Map 199/2, walkers will be able to use the other roads on the new estate, which are all to be adopted, to access Engine Lane.

2nd objecting party – general Officer comments

The dedication of this new path as a Bridleway is not something that can be provided. The planning permission for this path has set out 2 metres wide, so not the required 3 metres width for a new Bridleway. Maintenance of this path will be for the future management company.

Despite all efforts being made to achieve the request for use/dedication of a new estate path as a bridleway, this had not been forthcoming from the applicants/developers. The estate planning permission had already been granted and hadn't provided for this. Maintenance of the new estate path would be for a future management company; therefore, the developers didn't want to burden future householders with bridleway-standard maintenance.

It is felt that a bridleway dedication request is outside the remit of the Public Path Diversion Order consultation process. It is outside of the two sections sought for diversion and are views that should have been expressed at the planning stage, therefore Officer opinion is that such objection is not relevant to the diversion proposals.

The applicants/landowners wish to keep the proposed diverted route, as that shown on their application.

i) The Legal Situation

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 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 the 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 so created, and any land held with it “

Consultation

Joint pre-order consultations were carried-out for the two proposed diversions (including local Public Rights of Way user groups, utility companies, landowners/neighbouring landowners, Nailsea Council, and the local Ward member). Responses included two parties expressing support for the proposals and two parties objecting to the proposed LA13/5/10 13/5/20 and LA13/6/20 diversion.

Financial Implications

A Public Path Diversion Order is subject to set charges and actual advertisement costs (for two press notices). The applicants have agreed to pay these charges on completion of the Diversion Orders.

If any Order is submitted to the Secretary of State for Environment, Food and Rural Affairs for determination, the council are liable for any further costs involved in any subsequent Planning Inspectorate procedures.

However, these financial considerations **must not** form part of the Committee’s decision.

Costs

The Applicants have agreed to pay

[1] pay North Somerset Council within twenty–eight days of receiving an invoice, the cost of:

- i. Pre-application and further negotiation/per hour £ 59.00
- ii. Undertaking informal consultations and Report £ 835.00
- iii. Drafting, publishing and confirming the Order £1630.00
- iv. Advertising the Order (at least 2 adverts, at newspaper cost)

[2] Meet the costs of bringing the new path into a fit condition for use by the public in accordance with the schedule of works agreed with North Somerset Council.

If the LA13/5/10 13/5/20 and LA13/6/20 proposal does not reach the Order-making/Confirmation stages and has not been withdrawn by the applicants, the council would not pass on any charges to the applicants. However, if the applicants withdraw their application, the council will reserve the right to charge for any advertisement costs incurred.

The diversion will have further financial implications for the council if Orders are objected to and need to be submitted to the Secretary of State for determination.

Funding

Expenditure associated with both diversion proposals, such as advertisement of any Orders (in the region of £900), will be recorded against normal Public Rights of Way budgets. The applicants for the LA13/5/10 13/5/20 and LA13/6/20 proposal will be recharged for their contribution, as detailed in the costs section above, when processing of the application is complete.

If the Order(s) needs to be submitted to the Secretary of State for determination, this further submission and any subsequent proceedings costs will be borne by the council.

Legal Powers and Implications

This order will be made under legislation defined by Section 119 of the Highways Act 1980. If an Order is made, and objections received it will be referred to the Secretary of State for determination.

Climate Change and Environmental Implications

Improvements or additional routes added to the Public Rights of Way network encourage sustainable travel by enabling the public to walk, cycle or ride a horse across our District; reducing carbon emissions and improving our environmental footprint.

Risk Management

If an Order is made and objections are received at the formal consultation stage which cannot be resolved by the council, and if the Order is then submitted to the Secretary of State for confirmation, there are three methods which an Inspector can use to determine the matter: Written Representations; a Hearing or a Public Inquiry. The Objectors are invited to state which method they wish to be followed; the Council have no say in deciding.

Equality Implications

An Equality Impact Assessment has not been undertaken as it is not considered to directly affect the nature of the application.

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 the point of use.

10. Corporate Implications

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

11. Options Considered

The options to be considered by this Committee are:

- i) to approve the making of two Public Path Diversion Orders under section 119 of the Highways Act 1980 to divert parts of Footpath LA13/5, 13/5 and LA13/6;
- ii) to authorise the subsequent confirmation of the Orders if no objections are received when the Orders are published;
- iii) that where an Order is made and objections are received and sustained to any of the Order, to forward that Order to the Secretary of State for determination and promote that Order in any subsequent proceedings.
- iv) to abandon the proposed Public Path Diversion Order under section Town and Country Planning Act 1990 for part of Footpath LA13/5/10 13/5/20 and LA13/6/20 and advise the applicants, that proposal will be progressed under Section 119 of Highways Act 1980.

Author:

Paul Hayward, Access Support Officer, Access Team, Natural Environment Team
Telephone 01934 427467

Appendices:

Appendix 1 – Proposed Map No 199/1

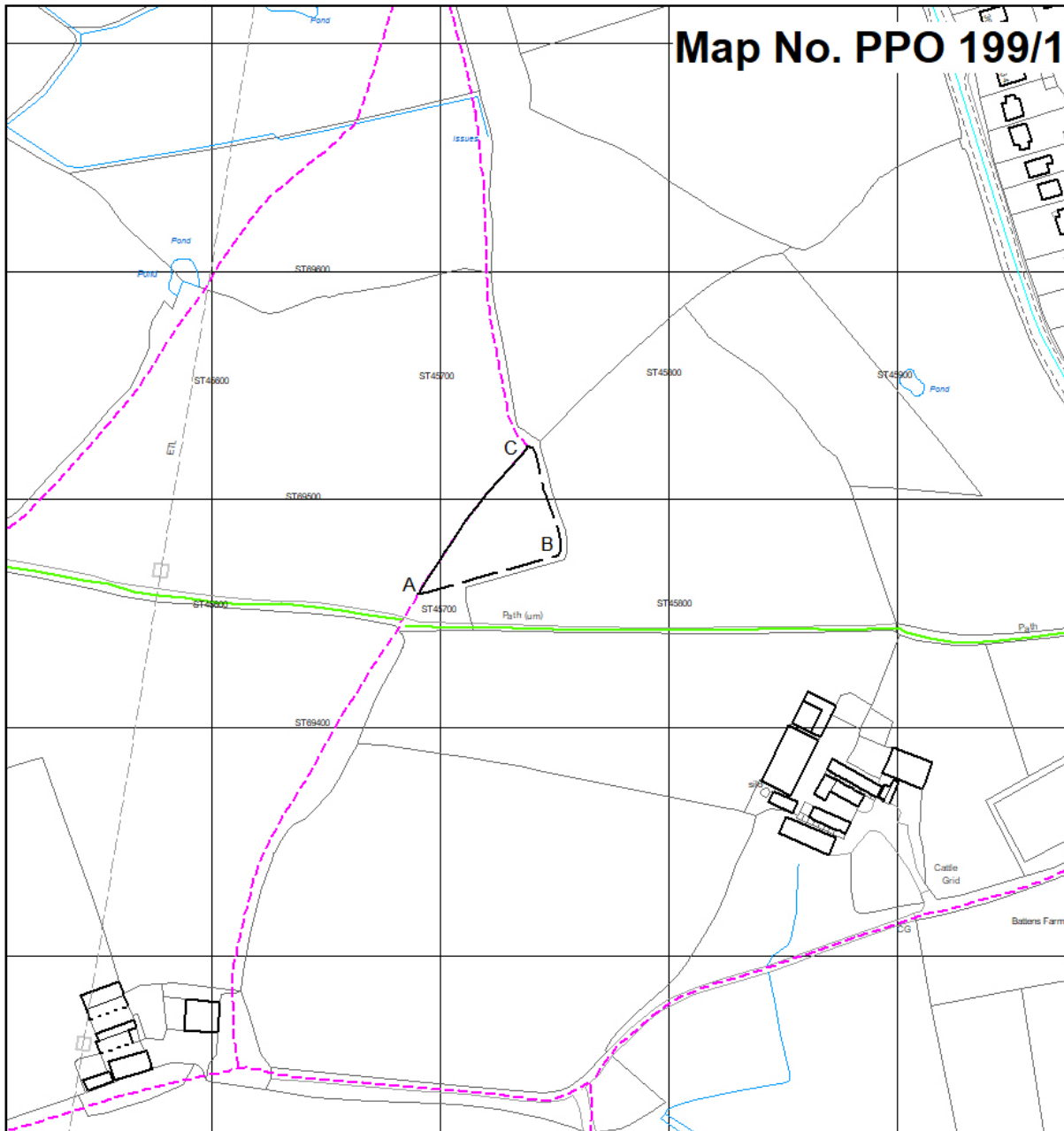
Appendix 2 - Proposed Map No 199/2

Appendix 3 – Developers Drawing P20-0001 20C

Appendix 4 – Letters in support of application

Background Papers:

Public Rights of Way File PPO 199



Map No. PPO 199/1

Highways Act 1980 - Section 119 North Somerset District Council
Proposed Public Path Diversion Order
 Parts of footpaths LA 13/5/10 LA 13/5/20 and LA 13/6, west of Engine Lane Nailsea

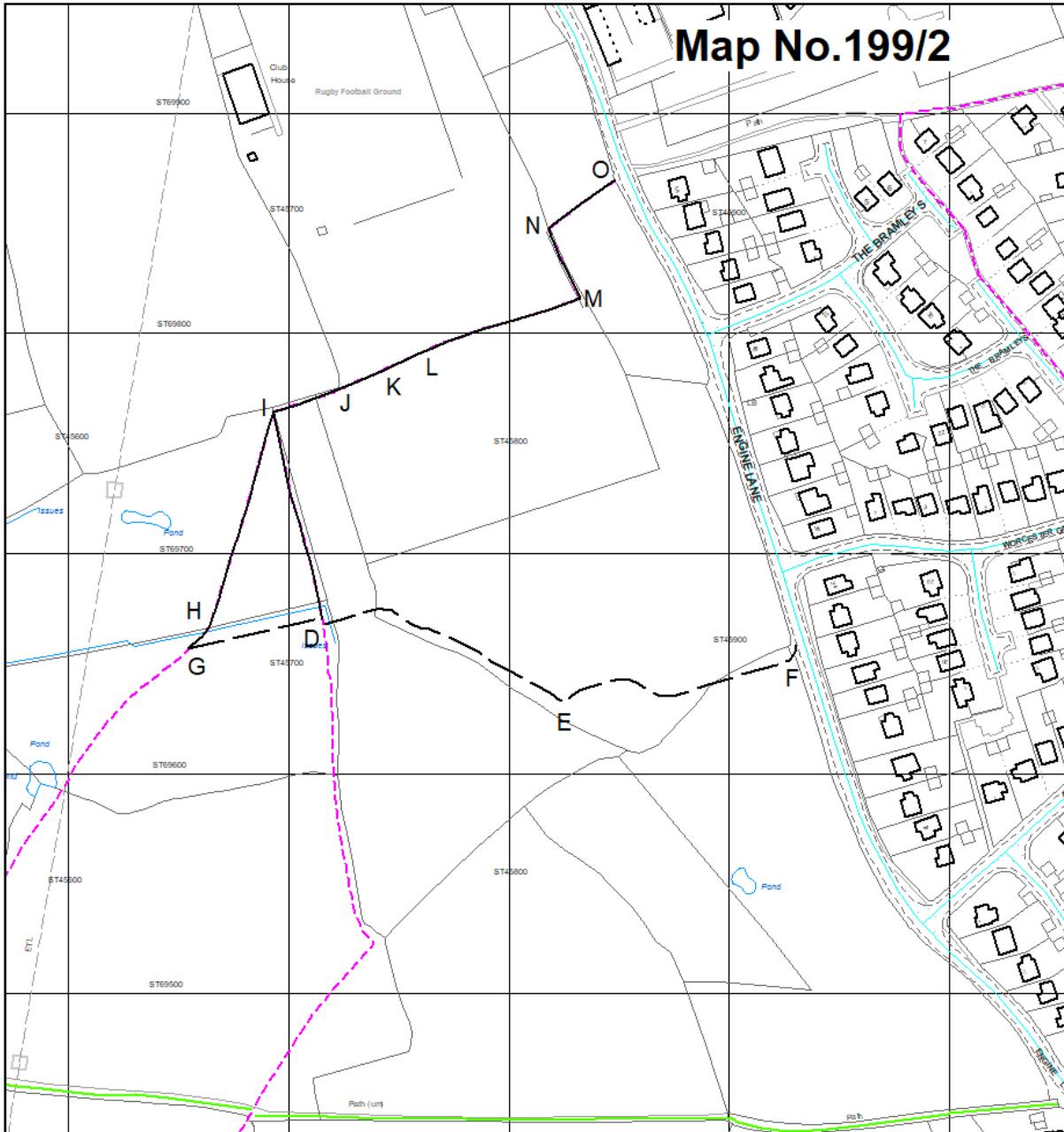


Place Directorate
 Public Rights of Way
 Streets and Open Spaces
 North Somerset Council
 Town Hall
 Walliscote Grove Road
 Weston-super-Mare
 BS23 1UJ
 Tel: 01934 888 802



Scale 1:2485
 Date 14 March 2024
 Grid Square
 Drawn by Paul Hayward
PATH TO BE DIVERTED
 Existing ———
 Proposed - - - - -
 Connecting Paths - - - - -

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Highways Act 1980 - Section 119 North Somerset District Council
Proposed Public Path Diversion Order

Parts of Footpaths LA 13/5/10 LA 13/5/20 and LA 13/6 west of Engine Lane, Nailsea



Place Directorate
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







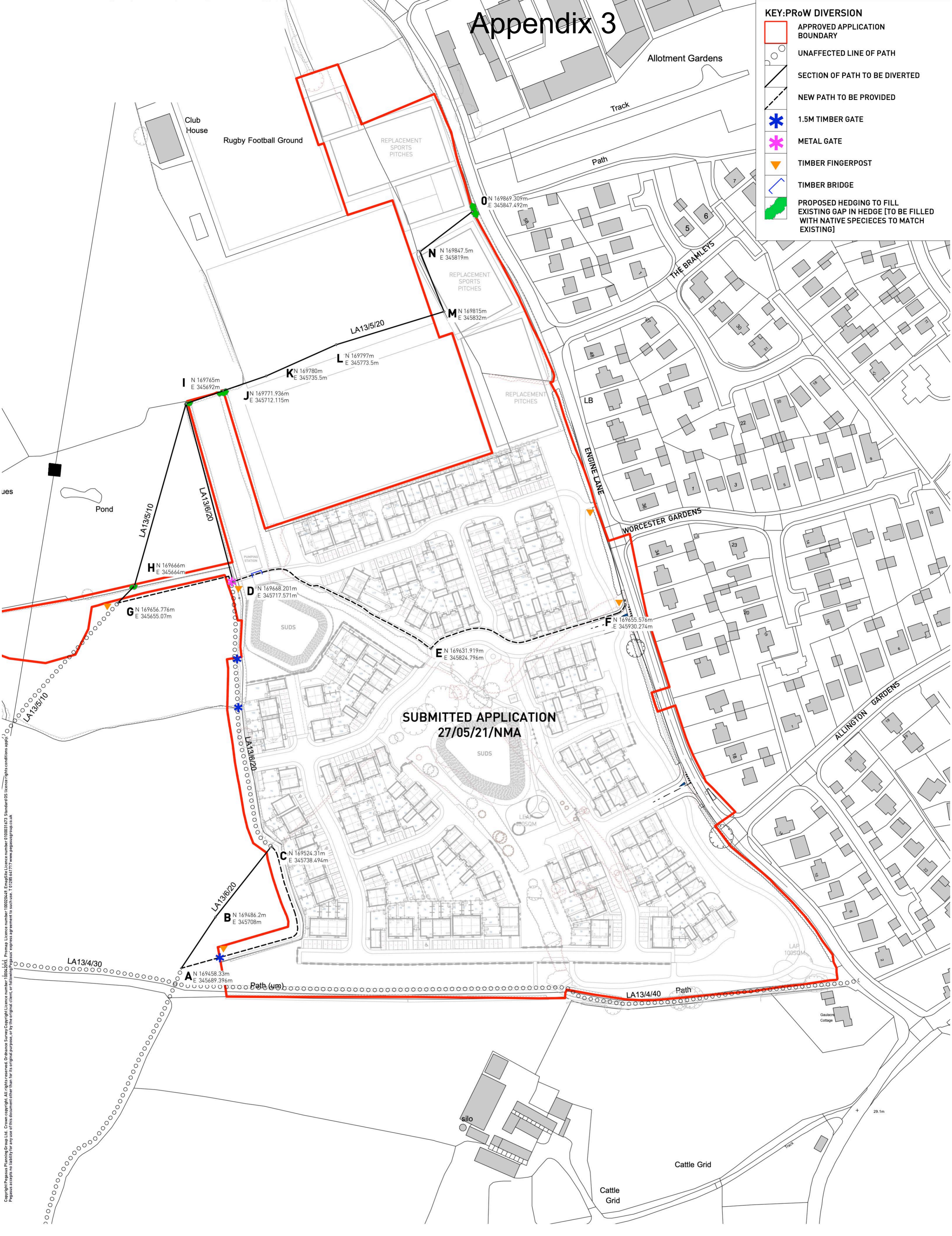
Scale 1:2493	NORTH
Date 13 March 2024	
Grid Square Paul Hayward	
Drawn by	
PATH TO BE DIVERTED	
Existing	—————
Proposed	- - - - -
Connecting Paths	- · - · -

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Appendix 3

KEY: PRow DIVERSION

-  APPROVED APPLICATION BOUNDARY
-  UNAFFECTED LINE OF PATH
-  SECTION OF PATH TO BE DIVERTED
-  NEW PATH TO BE PROVIDED
-  1.5M TIMBER GATE
-  METAL GATE
-  TIMBER FINGERPOST
-  TIMBER BRIDGE
-  PROPOSED HEDGING TO FILL EXISTING GAP IN HEDGE [TO BE FILLED WITH NATIVE SPECIES TO MATCH EXISTING]



ENGINE LANE, NAILSEA - PUBLIC RIGHT OF WAY DIVERSION Pegasus Design



Appendix 4 – Letters in support of application

Mr & Mrs B Gray

Somerset

Alex Winter
Barrett Homes
Barrett House,
710 Waterside Drive, Aztec West
Almondsbury
Glaston BS32 4UD

17/01/2022

Engins Lane, Nailsea, PRow Diversion Application

Dear Alex,

We hereby consent to the permanent diversion of the sections of LA 13/01/0, LA 13/02/0 and LA 13/02/0, as detailed in drawing P20-0001_20C submitted in support of the Section 257 application by BDW Trading Ltd

Sincerely,

Mr & Mrs B Gray

Cherry Orchard Farm
Nailsea
North Somerset

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

Dear Sirs

Land at Engine Lane, Nailsea

I hereby consent to the permanent diversion of the sections of LA 13/5/10, LA 13/5/20 and LA 13/6/20, as detailed in drawing P20-0001_20C submitted in support of the Section 257 application by BDW Trading Ltd.

Yours faithfully

D W Baker

Date: 25/01/22



Nailsea & Backwell RFC

(Register No. 30095R)

West End Park, West End Lane, Nailsea, N Somerset, BS48 4BY
Tel: 01275 810818; website: www.nbrfc.co.uk

Public Rights of Way
North Somerset Council
c/o Barratt Homes

12th February 2022

Dear Sir / madam

Reference: Public Right of Way Permanent Diversion

Nailsea & Backwell RFC hereby consent to the permanent diversion of the sections of LA 13/5/10, LA 13/5/20 and LA 13/6/20, as detailed in drawing P20-0001_20C submitted in support of the Section 257 application by BDW Trading Ltd.

Full details of the reasons for the support of the diversion will be provided during the consultation period.

Kind Regards


Treasurer
Nailsea & Backwell RFC