

Meeting: Cabinet

Date: 12 May 2026

Wards affected: St Peters with St Marys

Report Title: Gillard Road, Brixham – Public Path Creation Order

Cabinet Member Contact Details: Councillor Chris Lewis, Cabinet Member for Place Development and Economic Growth, chris.lewis@torbay.gov.uk

Director Contact Details: Alan Denby, Director of Pride in Place, alan.denby@torbay.gov.uk

1. Purpose of Report

- 1.1 The proposal seeks consent to convert an existing permissive path running along and off Gillard Road, Brixham into a formally designated Public Right of Way (PROW). This involves changing the current informal, permission based access arrangement into a legally recorded route on Torbay Council's Definitive Map and Statement.
- 1.2 Historically, access has been permitted voluntarily and is therefore subject to withdrawal. The path if designated would become a permanent Public Right of Way with full legal protection and maintenance responsibility assigned to Torbay Council.
- 1.3 The intended outcome is to secure long-term public access, improve certainty for residents and visitors, and support safer, well connected pedestrian movement within the area. Formal designation will ensure the route remains available, enhancing the local walking network and supporting wider community and sustainability goal.

2. Reason for Proposal and its benefits

- 2.1. The proposal in this report will help us deliver our vision of a healthy, happy, and prosperous Torbay by securing a safe, reliable, and accessible walking route for everyday use. By protecting this connection, the proposal strengthens local neighbourhood links and encourages active travel, contributing to healthier lifestyles and stronger community participation fully aligned with the Community and People theme.
- 2.2. The proposal will enhance the Pride in Place by investing in Brixham's local walking infrastructure and improving the quality, certainty, and visibility of an important pedestrian route. Establishing a PROW makes better use of an existing community asset, ensuring that residents and visitors benefit from a well-maintained, attractive, and clearly defined path that supports the town's distinct identity. This helps put residents at the heart of service planning responding to established patterns of public use and need.

- 2.3. The decision if approved will strengthen Torbay's wider sustainable transport network, supporting economic growth by encouraging greater footfall within Brixham, promoting low impact tourism, and improving access to local businesses. A protected PROW demonstrates collaborative working between the Council, landowners, and the community, while also enabling efficient long-term management and reducing risks associated with the potential loss of access.

3. Recommendation(s) / Proposed Decision

- 3.1 That Cabinet recommend to the Adjourned Annual Council meeting on 14 May 2026:

3.1.1 That the Divisional Director for Place Strategy be requested to exercise his delegated powers to authorise the making of a Public Path Creation Order under Section 26 of the Highways Act 1980 in respect of the footpath at/off Gillard Road, Brixham shown edged red on the plan attached as appendix 1.

3.1.2 That the Divisional Director for Place Strategy, in consultation with the Cabinet Member for Place Development and Economic Growth, be given delegated authority to confirm the Order if there are no objections or objections are withdrawn. In circumstances whether there are objections, the Divisional Director for Place Strategy shall seek confirmation of the Order from the Secretary of State.

4. Appendix

Site Plan - Gillard Road, Brixham

5. Background Documents

N/A

Supporting Information

6. Introduction

- 6.1 The existing path running alongside and off Gillard Road, Brixham shown edged red on the plan attached as appendix 1 is presently a permissive path, meaning public access is allowed voluntarily by the landowner but can be withdrawn at any time. Recent uncertainty arose when the land, previously owned by Torbay Coast and Countryside Trust (TCCT), entered liquidation and was placed for sale, raising concerns that public access could be lost without formal protection.
- 6.2 Torbay Council already manages and maintains its existing PROW network, including the Definitive Map and Statement, the legal record of all protected routes. The Council inspects PROWs, works with landowners on maintenance issues, and responds to public reports of problems. However, permissive paths such as this are not included on the Definitive Map and therefore carry no legal protection or maintenance responsibility by the authority.
- 6.3 Because the path is permissive rather than statutory, its continued availability is not guaranteed, particularly given the change in land ownership following liquidation of TCCT. Without PROW designation, the community risks losing an important and safe walking link that residents and visitors rely on. Securing it as a PROW provides legal permanence, supports safe active travel, and aligns with statutory duties to protect and maintain the public rights of way network.
- 6.4 The proposal is therefore to seek to designate the path as a PROW by issuing a Public Path Creation Order under Section 26 of the Highways Act 1980. This is the formal mechanism to follow to legally establish the PROW.

7. Options under consideration

- 7.1 There are several options available to the Council. The Council could continue to rely on landowners' voluntary permission for public access, with no move to legally record the route. This would result in no immediate resource requirement or legal process for the Council to instigate. The do-nothing approach might see the current walking access maintained in the short term. However, public access would remain insecure and could be withdrawn at any time by the new owners. There would be a real possibility of the path being lost in the near future due to the land sale and change of ownership.
- 7.2 An alternative option would be to seek a long-term permissive access agreement with the new landowners without creating a PROW. The advantages of this approach would allow continued public use by agreement and would be a less administratively complex process to follow than a Public Path Creation Order. This approach would nevertheless carry a future risk of the permissive access being withdrawn at any time, even if formalised. This approach would mean there would be no statutory maintenance obligation for the Council, leading to inconsistent quality of the path.
- 7.3 Another option would be to enter into a Public Path Agreement under Section 25, Highways Act 1980 with landowners for the voluntary dedication of the path as a PROW. Following the sale of the TCCT land, ownership of the land over which the path runs will however be fragmented and negotiations likely to be protracted.

- 7.3 The preferred option is to seek a Public Path Creation Order. This will provide a permanent, legally protected PROW that cannot be removed except through formal legal processes. It would support wider active travel, wellbeing, and connectivity goals and allow the Council to maintain the path to required standards, improving safety and accessibility for residents and visitors. This approach will require the completion of statutory processes, including notices and potential consultation or objections. It will also generate ongoing maintenance responsibilities and associated costs for the Council.

8. Financial Opportunities and Implications

- 8.1 Once the permissive path is designated as a PROW, Torbay Council will assume responsibility for maintaining it as part of the legally recorded PROW network. This includes inspection, addressing safety issues, vegetation management, and ensuring the route remains unobstructed consistent with the Council's current duties for PROWs. Furthermore, reasonable adjustments may be required should it be established the pathway fails to reach the required accessibility standards. These activities will require allocation of staff time within the Highways and Green Infrastructure teams and may incur minor works costs depending on the condition of the route once brought into the statutory network.
- 8.2 Establishing the route as a PROW under a Public Path Creation Order requires a formal process, including, notices, potential consultation, and drafting of an Order and, if confirmed, a Definitive Map Modification Order. This process will involve officer time, publication and administrative costs and legal costs if objections are lodged and are not withdrawn.
- 8.3 Failure to secure the route could lead to additional costs in the future for example, identifying or constructing alternative access, negotiating with new landowners, or responding to community concerns. The urgency created by the recent disposal of the land at auction highlights the risk of access being withdrawn if formal designation does not proceed. Formalising the route therefore helps avoid future costs arising from lost connectivity or the need for new infrastructure.
- 8.4 Designating the path maximises an existing community asset, aligning with Torbay Council's approach to efficient use of resources and the strategic aim of supporting active travel through the rights of way network. The Council already holds structures, processes, and teams for maintaining PROWs, meaning the addition of this route creates only proportionate incremental cost within an existing service framework.
- 8.5 There is a possibility for claims for compensation for loss caused by a Public Path Creation Order. The level of compensation payable is limited to the value of an interest of a person owning the land being depreciated or the owners of the land being able to demonstrate they have suffered damage by being disturbed in their enjoyment of the land, in consequence of the coming into operation of a Public Path Creation Order.

9. Legal Implications

- 9.1 Under Section 26, Highways Act 1980 the Council can make a Public Path Creation Order, imposing a footpath on a landowner. The Council must consider there is need for a footpath, having regard to:
- the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of residents in the area.

- the effect that the creation of the path would have on the rights of those interested in the land, having considered provisions available for payment of compensation.
- 9.2 The Council must be satisfied that, on both criteria, it is expedient to make the Order. This applies in respect of the principle of the footpath but also to the detail of its alignment, length and width. Due regard must be given to the needs of agriculture and forestry and to the desirability of conserving flora and fauna and geological and physiographical features. The Council must balance the public interest in creation of the public path against the private interest of the landowner.
- 9.3 The Order, once made, is open to objection and is subject to confirmation.
- 9.4 Where the Order is opposed (where objections are lodged and are not withdrawn) the Order will have to be confirmed by the Secretary of State. Where it is unopposed, it may be confirmed by the Council. In either case, the confirming body must have regard to any material provision of a rights of way improvement plan prepared by the Highway Authority.
- 9.5 Where objections have been lodged there will be a public inquiry or, alternatively, a public hearing into the objections at which the landowner and any other objector may appear to oppose the confirmation of the Order. The effect of the Order is to acquire compulsorily the right for the public to pass over the land, but not to acquire ownership of the land.9.6 In addition, the Wildlife and Countryside Act 1981, Section 53 establishes the legal mechanism for modifying the Definitive Map and Statement where a public right of way should be added. Local authorities, including Torbay Council, maintain a statutory Definitive Map, which is the conclusive legal record of public rights of way.
- 9.7 Once recorded on the Definitive Map, the Council becomes legally responsible for keeping the route unobstructed and safe for use. In addition, it will be responsible for ensuring legal compliance by landowners in preventing obstruction or interference with the right of way. The Council must also maintain clear signage and ensure the path remains accessible, consistent with its responsibilities for the wider PROW network.

10. Engagement and Consultation

- 10.1 Brixham Town Council played a direct role in prompting Torbay Council to explore the protection of the route. They formally approached the Council to act, highlighting the path's importance to the community and advocating for long-term protection.
- 10.2 Consultation has included notifying the Liquidators handling the sale of the land, ensuring they are aware of the Council's intention to pursue statutory protection. This forms part of early landowner engagement.

11. Procurement Implications

- 11.1 At this stage, the proposal to designate Gillard Road path as a PROW is primarily a statutory and administrative process, involving the preparation of a Public Path Creation Order, consultation, notice publication and officer time.

- 11.2 As such, no significant external procurement of goods, services, or works is anticipated at this stage. Any work arising (e.g., signage installation, minor path surfacing, vegetation clearance) would likely fall within existing Highways and Green Infrastructure operational budgets and frameworks and be delivered by the Council's existing contracted partners.

12. Protecting our naturally inspiring Bay and tackling Climate Change

- 12.1 The designation of the route as a PROW does not involve constructing new infrastructure or commissioning new buildings, fleet, ICT, or energy consuming assets. Any future minor maintenance (e.g., signage, vegetation management) would fall within normal PROW operations and would not introduce significant new emissions.
- 12.2 PROW support active travel by providing carefree routes for walking. Strengthening such networks can help reduce transport emissions. The path already exists and is in longstanding community use. Designation as a PROW does not require physical alteration of the landscape. It may help maintain the land in a more consistent and environmentally sensitive state by ensuring vegetation management is carried out appropriately, avoiding unmanaged deterioration or overgrowth and protecting the route from inappropriate obstruction.

13. Associated Risks

- 13.1 If the path is not designated as a PROW, the community risks losing access entirely. The land has recently been sold following the liquidation of TCCT, and permissive access may be withdrawn at any time by the new landowners. This risk has already been highlighted publicly, and concern has been expressed by Brixham Town Council and residents.
- 13.2 The path is an important pedestrian link used by residents and visitors. Losing it would remove a safe, traffic free walking route, undermine active travel objectives and potentially increase reliance on motorised transport. Public footpaths provide important networks for walking and access to nature.
- 13.3 If access is lost, the Council may face pressure to identify, negotiate, purchase, or construct an alternative route. This could result in significantly higher long-term financial burden compared with securing the existing route now. Evidence shows the current route is already valued and well used, meaning replacing it would be difficult and costly.
- 13.4 A Public Path Creation Order is open to objection. Where the Order is opposed and objections not withdrawn the Order will have to be confirmed by the Secretary of State. There will be a public inquiry or, alternatively, a public hearing into the objections and potential costs implications.
- 13.5 Landowners may claim compensation for depreciation or disturbance as a consequence of a Public Path Creation Order.

14. Equality Impact Assessment

Protected characteristics under the Equality Act and groups with increased vulnerability	Data and insight	Equality considerations (including any adverse impacts)	Mitigation activities	Responsible department and timeframe for implementing mitigation activities
Age	<ul style="list-style-type: none"> 18% of Torbay residents are aged under 18 years old. 55% of Torbay residents are aged between 18 to 64 years old. 27% of Torbay residents are aged 65 and older. 	Improve community engagement with opportunities for the wider community of all ages.	No adverse impact.	Not applicable
Carers	<ul style="list-style-type: none"> At the time of the 2021 census there were 14,900 unpaid carers in Torbay. 5,185 of these carers provided 50 hours or more of care. 	No differential impact specific to this group	Not applicable.	Not applicable
Care experienced	<ul style="list-style-type: none"> As of January 2026, there were 277 former care experienced young people aged 18-24 in Torbay. 	No differential impact specific to this group	No adverse impact.	Not applicable
Disability	<ul style="list-style-type: none"> In the 2021 Census, 23.9% of Torbay residents answered that their day-to-day activities were limited 	It is recognised that people with disabilities especially those who use wheelchairs face numerous barriers to	Highways to provide an assessment of the paths current accessibility standards.	Highways and Green Infrastructure team.

	<p>a little or a lot by a physical or mental health condition or illness.</p>	<p>accessing green space. This includes difficulties using wheelchairs on uneven ground and navigating steep gradients.</p> <p>The accessibility of the path and its suitability for wheelchair users is yet to be determined.</p>		
Gender reassignment	<ul style="list-style-type: none"> In the 2021 Census, 0.4% of Torbay's community answered that their gender identity was not the same as their sex registered at birth. 	No differential impact specific to this group	No adverse impact.	Not applicable
Marriage and civil partnership	<ul style="list-style-type: none"> Of those Torbay residents aged 16 and over at the time of 2021 Census, 44.2% of people were married or in a registered civil partnership. 	No differential impact specific to this group	Not applicable.	Not applicable
Pregnancy and maternity	<ul style="list-style-type: none"> Between 2013 and 2024, the rate of live births (as a proportion of females aged 15 to 44) has been slightly but significantly higher in Torbay (average of 56.0 per 1,000) than the 	No differential impact specific to this group	No adverse impact.	Not applicable

	<p>Southwest (53.4) and broadly in line with England (56.3).</p> <ul style="list-style-type: none"> For the period 2022 to 2024, rates in Torbay (44.6) have been significantly below England (50.0). 			
Race	<p>In the 2021 Census, 96.1% of Torbay residents described their ethnicity as the following:</p> <ul style="list-style-type: none"> 1.6% as Asian, Asian British or Asian Welsh 0.3% as Black, Black British, Black Welsh, Caribbean or African 1.5% as being of Mixed or Multiple ethnic groups 96.1% as White 0.4% described their ethnicity another way. <ul style="list-style-type: none"> Black, Asian and minoritised ethnic communities are more likely to live in areas of Torbay classified as being amongst the 20% most deprived areas in England. 	No differential impact specific to this group	No adverse impact.	Not applicable
Religion and belief	<p>The 2021 Census showed that the residents in Torbay identify their religion and/or belief as the following;</p> <ul style="list-style-type: none"> 48.5% are Christian 	No differential impact specific to this group	No adverse impact.	Not applicable

	<ul style="list-style-type: none"> • 0.4% are Buddhist • 0.2% are Hindu • 0.6% are Muslim • Less than 0.1% are Sikh • 0.1% are Jewish • 0.7% have another religion • 43.2% have no religion • 6.3% did not answer 			
Sex	<ul style="list-style-type: none"> • 51.3% of Torbay's population are female. • 48.7% of Torbay's population are male. 	No differential impact specific to this group	No adverse impact.	Not applicable
Sexual orientation	<p>In the 2021 Census, residents described their sexuality as follows;</p> <ul style="list-style-type: none"> • 89% as Straight or Heterosexual • 1.7% as Gay or Lesbian • 1.1% as Bisexual • 0.1% as Pansexual • 0.1% described their sexuality another way • 7.4% of people didn't answer the question 	No differential impact specific to this group	No adverse impact.	Not applicable
Armed Forces Community	<ul style="list-style-type: none"> • In 2021, 3.8% of residents in England reported that they had previously served in the UK armed forces. • In Torbay, 5.9% of the population have previously served in the UK armed forces. 	No differential impact specific to this group	Not applicable.	Not applicable

Additional considerations				
Socio-economic impacts (Including impacts on child poverty and deprivation)	<ul style="list-style-type: none"> Torbay is ranked as the 39th most deprived upper tier local authority in England in the Index of Multiple Deprivation 2025. 	No differential impact specific to this group	Not applicable.	Not applicable
Public Health impacts (Including impacts on the general health of the population of Torbay)	<ul style="list-style-type: none"> For the five-year period 2020 to 2024, data shows there is a 6-year life expectancy gap between males who live in Torbay's least and most deprived areas and, a 3-year gap for females. 	Improve community health whilst contributing to healthier lifestyles and stronger community participation.	Access to Green Space provides various known benefits and promotes exercise.	Not applicable
Human Rights impacts		The proposal raises implications under the First Protocol Article 1 of the Human Rights Act 1998 which protects a person's peaceful enjoyment of his possessions (including property). It is considered that the making of a public path creation order (PPCO), for the reasons set out in this report, is in the public interest and the interference with the peaceful enjoyment of landowners' property proportionate having regard to legitimate aims in pursuing the proposed PPCO.	Appropriate engagement with the landowners.	Finance

Child Friendly		No differential impact specific to this group	No adverse impact.	Not applicable
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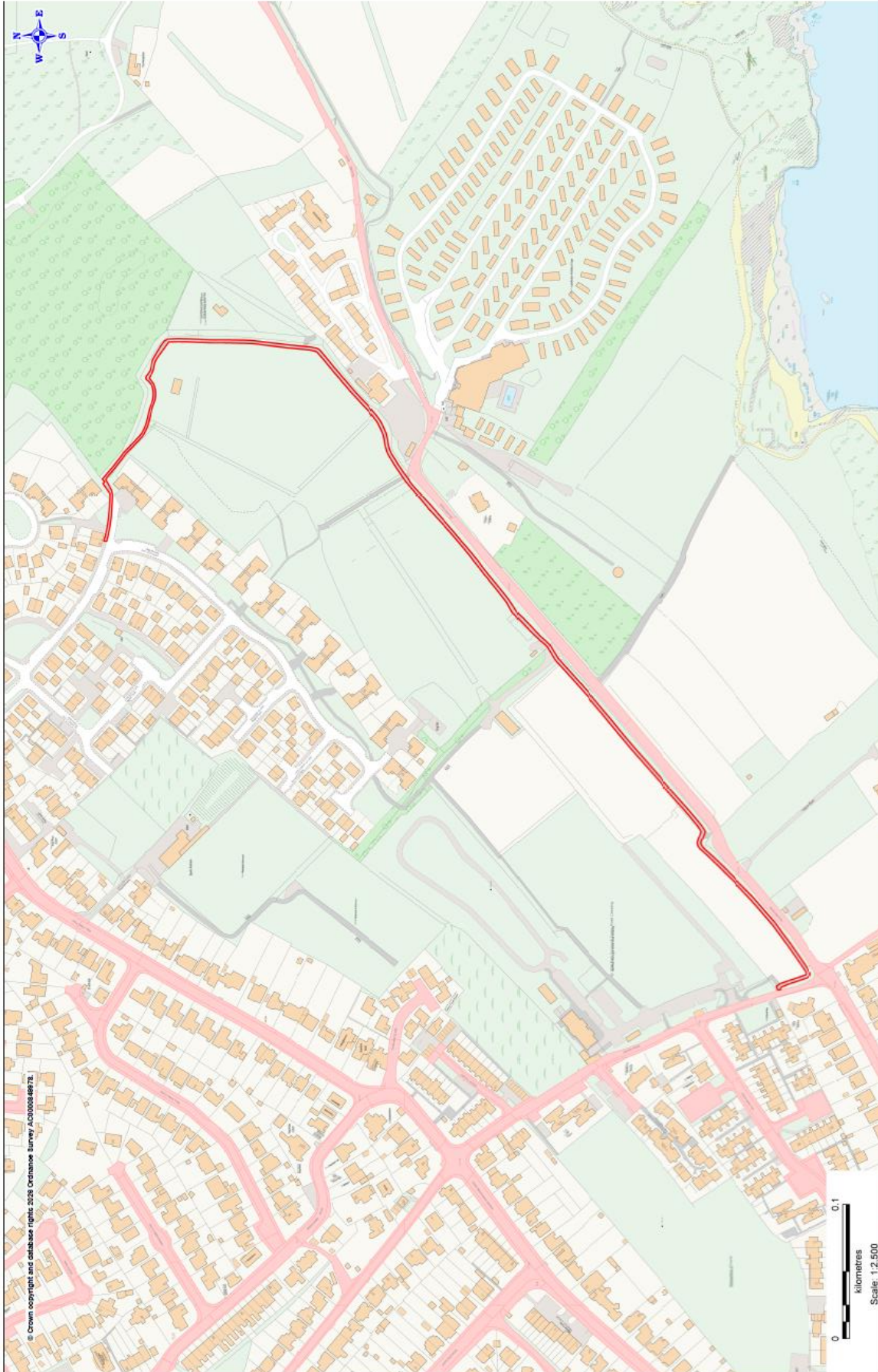
15. Cumulative Council Impact

15.1 None

16 Cumulative Community Impacts

16.1 None

Appendix – Site Plan: Gillard Road, Brixham



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TORBAY
COUNCIL

Scale: 1:2,500 @ A3
Area: 1,206 m²

Title: Path adjacent Gillard Road, Brixham
Date: 2 April 2026

TDA - ASSET MANAGEMENT