Report to the Executive Director for Place

Application for an order under Section 257 of the Town and Country Planning Act 1990 to stop-up Footpath 160 and to divert Footpaths 24 (part) 161, 162, and Bridleway 21 (part), Weymouth.

Lead Members: Cllr Tony Ferrari and Cllr. Louie O' Leary ward, Dorset Council members for Littlemoor and Preston

Lead Officer: Matthew Piles, Corporate Director for Economic Growth and Infrastructure

Executive Summary: This report considers an application for an order under Section 257 of the Town and Country Planning Act 1990 to stop-up Footpath 160 and to divert Footpaths 24 (part) 161, 162, and Bridleway 24 (part), Weymouth, as shown on the plan at Appendix 1.

Equalities Impact Assessment:

The surface and gradient of the new routes are considered to be no less accessible than the current routes.

Budget:
The applicant has agreed to pay in accordance with Dorset Council's usual scale of charges and also for the cost of advertising the order and subsequent notice of confirmation. The law does not permit Dorset Council to charge the applicant for the cost of obtaining confirmation by the Secretary of State if an order is the subject of an objection.

Risk Assessment:
Having considered the risks associated with this decision, the level of risk has been identified as:
Current Risk: LOW
Residual Risk LOW

Other Implications:
Sustainability –
The proposal will not have any effect on carbon emissions and supports alternative methods of travel to the car.

Use of public rights of way promotes a healthy balanced lifestyle.

Recommendations:
That:

(a) The application to stop-up Footpath 160 and to divert Footpaths 24 (part) 161, 162, and Bridleway 24 (part), Weymouth, be accepted and an order made;

(b) The order includes provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion / stoppings up; and

(c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by Dorset Council without further reference to the Executive Director for Place.

Reasons for Recommendations:

(a) The proposed diversions and stopping up meets the legal criteria set out in the Town and Country Planning Act 1990.

(b) The inclusion of these provisions in a public path order means that there is no need for a separate legal event order to modify the definitive map and statement as a result of the diversion / stopping up.

(c) Accordingly, the absence of objections may be taken as acceptance that the proposed new routes are expedient and therefore Dorset Council can itself confirm the order.

Appendices:

1. Plan showing proposed stopping up and diversion order.
2. Summary of consultation responses.

Background Papers:
n/a

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1 Background

1.1 Dorset Council has received an application from Persimmon Homes Ltd, to stop-up and divert a number of public rights of way on land to the south of Louviers Road, Weymouth, as shown on the plan attached as Appendix 1..

1.2 The application has been made in order to enable development to be carried out in accordance with Planning Permission granted under Part III of the Town and Country Planning act 1990.

1.3 Planning consent was granted by the former Weymouth and Portland Borough Council on 20th December 2018 for the construction of 114 dwellings, including creation of new access, landscaping, associated public open space and associated works on land to the south of Louviers Road, Weymouth. (Application no. WP/17/00832).

1.4 Footpaths 24, 160, 161 and 162, and Bridleway 21, Weymouth, run through the site of the development, and the developers have applied to Dorset Council for an order under section 257 of the Town and Country Planning Act 1990 to stop-up and divert the affected paths to enable the development to take place.

1.5 On 3rd September 2014 an application was made by Dr. M. Beeson under Section 53 of the Wildlife and Countryside Act 1980 for a modification order to add a number of footpaths to the definitive map, which run through the site of the development. These footpaths correspond to the lines of Footpaths 160, 161 and 162.

1.6 In order to provide for the inclusion of these lengths of path within a stopping-up and diversion order under Section 257 of the Town and Country Planning Act 1990, on 11th July 2018 the owners of the land dedicated the claimed paths as public footpaths.

1.7 However, this dedication of the paths as public footpaths does not remove the Council's duty under the Wildlife and Countryside Act 1981 to investigate the application that has been submitted by Dr. Beeson, and, if necessary, to make a modification order to add the paths to the definitive map. The application for the modification order is awaiting processing.

1.8 Should investigations indicate that the lines of the claimed paths correspond with the lines and status of the paths that are to be subject to a diversion order under Section 257 of the Town and Country Planning Act 1990, then it will be the case that the claimed paths will have been diverted by that order.

1.9 The length of footpath 160 that would be stopped-up by the order is shown on the plan as a bold line between points X and F.

1.10 The length of Footpath 24 that would be diverted by the order is shown on the plan as a bold line between points E and F. The proposed alternative length of footpath is shown as a broken black line between E, E1, E2, E3, M and F. The alternative length of footpath would have a width of 2 metres and in part a tarmac surface and part hoggin surface.

1.11 The length of Footpath 161 that would be diverted by the order is shown on the plan as a bold line between points T, G, H, I, J, K, L and F. The proposed alternative length of footpath is shown as a broken black line between M, M1, N, O, P, P1, Q, Q1, R, S and T, and between P, U and V. The alternative length of footpath would have a width of 2 metres and in part a tarmac surface, part herringbone block paving, and part natural/grass surface. Between U and V there would be a culvert with a grass surface.

1.12 The length of Footpath 162 that would be diverted by the order is shown on the plan as a bold line between points A and E. The proposed alternative length of footpath is shown as a broken black line between A1, B, C, D and E1. The alternative length of footpath would have a width of 2 metres and a tarmac surface.

1.13 The length of Bridleway 21 that would be diverted by the order is shown on the plan as a bold line between points A and A2. The proposed alternative length of bridleway is shown as a broken black line between A, A1, A6, A5, A4, A3 and A2. The alternative length of bridleway would have a width of 4 metres and in part a tarmac surface and part hoggin surface.

1.14 The land crossed by the paths to be subject to the order is owned by the applicants for the order, Persimmon Homes Ltd, with exception of a short length of the proposed footpath between point V and the boundary of the site, which is owned by F. H. Cummings Ltd. F. H. Cummings has been consulted and has supplied an e mail confirming that they have no objections to this length of path running over their land.

1.15 The diversion and stopping up of the paths as proposed is necessary to enable development of 114 dwellings, including creation of new access, landscaping, associated public open space and associated works on land to the south of Louviers Road, Weymouth. (Application no. WP/17/00832), to take place.

2 Law

Town and Country Planning Act 1990

2.1 Dorset Council has powers to make public path diversion / stopping up orders under Section 257 of the Town and Country Planning Act 1990.

2.2 Section 257 of the Town and Country Planning Act 1990 makes provision for a competent authority to authorise the diversion or stopping up of any footpath, bridleway or restricted byway through the making of an order if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with a planning permission. The term “competent authority” is defined within Section 257 as being the local planning authority who granted the planning permission, in this instance Dorset Council.

2.3 The power contained in section 257 is available only if the development, insofar as it affects the path or way, is not yet substantially complete.

2.4 The power of confirmation is discretionary and non-confirmation may be justified in certain circumstances. After the expiry of a period of not less than 28 days to be provided by the notice of the making of the order, the Council may itself confirm the order if no objections had been made. Should objections be received, these may be withdrawn after discussion with the objector, leaving the Council free to confirm the order. If any objections are not withdrawn, the Council may pass the order to the Secretary of State for determination by an appointed Inspector, who would consider the matter by means of written representations, a hearing or a public inquiry, or, alternatively, the Council could resolve to withdraw the order.

2.5 An order would not come into force until such time as the works necessary to establish the alternative footpath had been carried out to a standard suitable for use by the public as footpaths.

Wildlife and Countryside Act 1981

2.6 Section 53A of the Wildlife and Countryside Act 1981 enables provisions to amend the definitive map and statement required by virtue of a diversion order to be included in the diversion order instead of being the subject of a separate legal event order.

Human Rights Act 1998 – Human rights implications

2.7 The provisions of the Human Rights Act and principles contained in the Convention of Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols of particular relevance are:

Article 8 - Right to respect for private and family life

The First Protocol, Article 1 - Protection of Property.

2.8 When considering whether it is expedient to make the order a council must have due regard of any argument put forward by an adjoining landowner that their rights under Article 8 and Article 1 of the First Protocol would be infringed.

2.9 Section 28 of the Highways Act 1980 provides that a person with an interest in land affected by the consequence of the coming into operation of a public path order can make a claim for compensation for the depreciation of land value or damage suffered by being disturbed in his enjoyment of land.

3 Compliance with the law

3.1 The proposed public path diversion / stopping up is necessary in order for development to take place.

3.2 If the order is unopposed it can be confirmed by the Council and need not be submitted to the Planning Inspectorate.

4 Consultation

4.1 The Council carried out a wide consultation in June 2019. Interested parties were sent details of the proposed stopping up and diversion order, and notices and plans were placed on the site.

4.2 A further consultation took place in September 2019. In response, the Open Spaces Society, Ramblers Association and Dr. Beeson expressed concern that the proposals put forward did not provide for a link between the alternative paths to be provided within the site and Bridleway 21, to the north.

4.3 The Ramblers Association also requested that the proposals provide for a length of footpath running within the informal recreation area in the south-western part of the site.

4.4 Following further consultations and negotiations between Persimmon Homes and the owners of the land to the north of the site, F. H. Cummings Ltd., a revised proposal was put forward by Persimmon Homes which provides for such a link.

4.5 The length of footpath shown between points P-U-V on the plan at Appendix 1 thus joins Bridleway 21 at point V. Persimmon Homes have also agreed to the provision of an additional length of path through the recreation area, which is shown on the plan between A and F.

4.6 Further consultations were carried out in November 2019 with the Ramblers Association, Open Spaces Society and Dr. Beeson.

4.7 Responses to this consultation were received from the Ramblers Association and Dr. Beeson.

4.8 The Ramblers responded to indicate that they would not oppose an order to make the revised proposals.

4.9 Dr. Beeson responded to say that the latest proposal address his ‘primary concerns’ but he still has reservations regarding the extinguishment of Footpath 160 and because of the possibility that cars might be parked on the footways on which the proposed new footpaths would run.

4.10 Further correspondence took place in February 2020 with Dr. Beeson and the local representative of the Open Spaces Society, both of whom have indicated that they would not oppose an order to effect the proposed changes.

4.11 The Councillors for Littlemoor and Preston ward, Cllr Tony Ferrari and Cllr. Louie o’Leary, were consulted on the application and have not objected to the proposed order.

4.12 All consultation responses are summarised in Appendix 2.

5 Discussion

5.1 The proposed stopping up and diversion meets the legal tests under the Town and Country Planning Act 1990.

5.2 The applicant will be responsible for carrying out the works that will be necessary to provide the new lengths of bridleway and footpath described in paragraphs 1.10 to 1.13 above to a standard suitable for use by the public.

5.3 The stopping-up and diversion order would not take effect until such time as the Council issues a certificate to confirm that these works have been carried out to a standard to its satisfaction. If confirmed by the Secretary of State, the order will provide that the diversions are not effective until the works have been completed and certified.

5.4 The works will be carried out and funded by the applicant, Persimmon Homes.

6 Conclusions

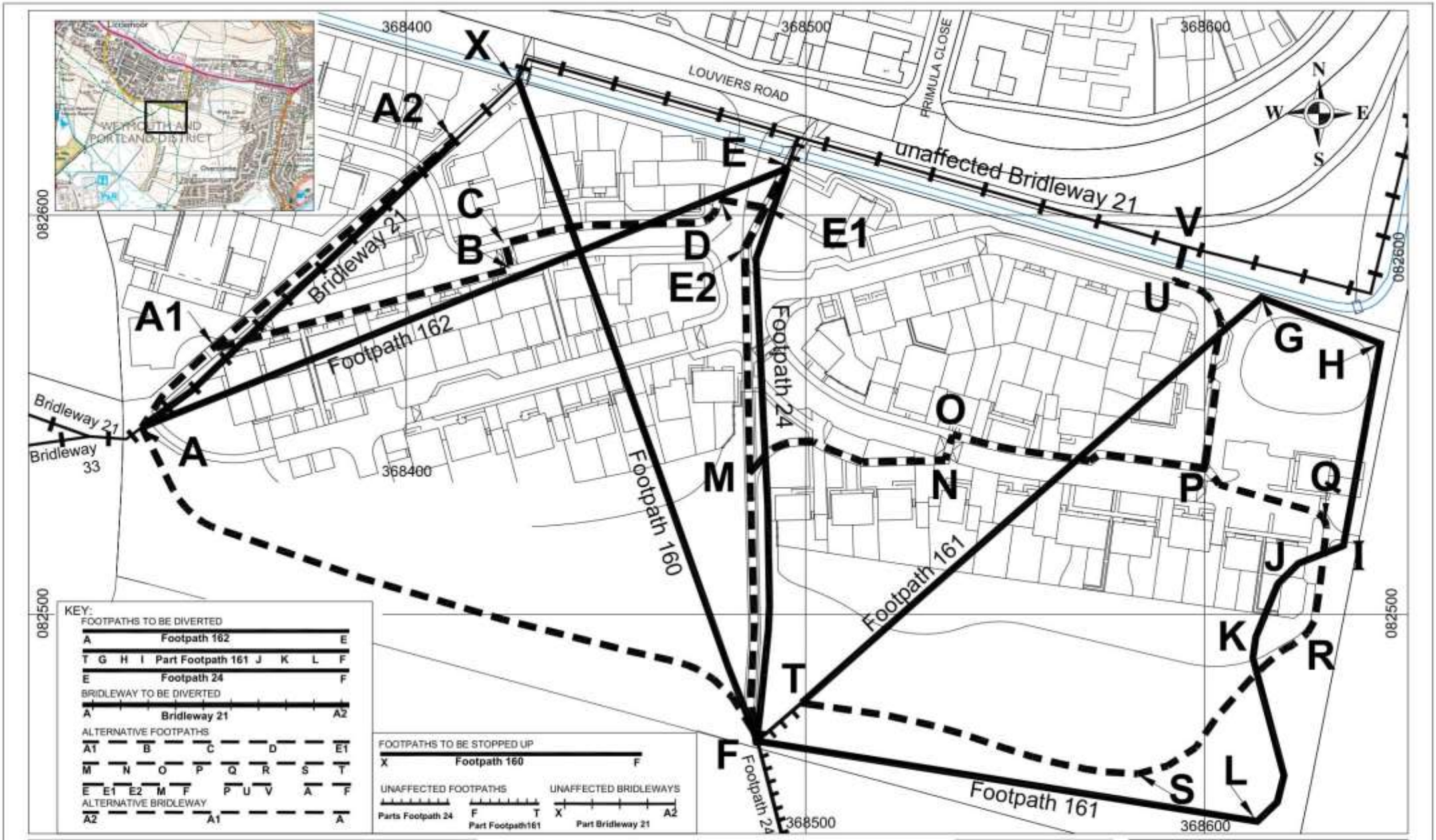
6.1 The application to stop up Footpath 160, Weymouth and divert part of Footpath 24, Footpath 161 and Footpath 162, and part of Bridleway 21 meets the tests set out under the Town and Country Planning Act 1990 and therefore should be accepted and an order made.

6.2 The Order should include provisions to modify the definitive map and statement to record the changes made as a consequence of the stopping up / diversion.

6.3 If there are no objections to a public path order, the criteria for confirmation may be presumed to have been met as the Executive Director for Place would already have considered the relevant tests and therefore the order should be confirmed.

Matthew Piles
Corporate Director for Economic Growth and Infrastructure

June 2020



TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257

PUBLIC PATH DIVERSION & STOPPING UP ORDER
Public Footpath Nos.24 (Part), 160, 161 (Part), 162 and
Public Bridleway No. 21 (Part) to
South of Louviers Road, WEYMOUTH

GRID REFERENCES:

A = SY 68335 82547	F = SY 68488 82468	O = SY 68536 82545
A1 = SY 68352 82566	G = SY 68614 82579	P = SY 68600 82536
A2 = SY 68411 82618	H = SY 68644 82567	Q = SY 68630 82523
B = SY 68426 82586	I = SY 68634 82517	R = SY 68627 82496
C = SY 68424 82592	J = SY 368620 82510	S = SY 68583 82460
D = SY 68478 82603	K = SY 68612 82491	T = SY 68498 82477
E = SY 68496 82612	L = SY 68613 82448	U = SY 68592 82583
E1 = SY 68489 82601	M = SY 68485 82535	V = SY 68594 82592
E2 = SY 68484 82591	N = SY 68535 82538	X = SY 68428 82634

Ref:
Date: 16/12/19
Scale: 1:2500
Drawn: JV
Cent X: 36847
Cent Y: 08255

Dorset Council

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Appendix 1

Appendix 2

Summary of consultation responses

Objecting to the proposed diversions:

Name	Comments
Mr. R. Homes Open Spaces Society	Response received 10/6/20: Concerns for the stopping-up of footpath 160 and the absence of a link to bridleway 21 or footpath 24. E mail received 25/2/20: It is not expected that the Society would object to the revised proposals for the order.
Ms. J. Wardell Group Secretary, The Ramblers	Response received 30/10/19: supporting comments in K. Gocher's letter of 29/7/19.
Ms. K. Gocher Group Secretary The Ramblers	Response received 29/7/19: Requests a link to bridleway 21 to the north of the suite, and a length of footpath running through the informal recreation are in the south-west part of the site. Response from Ms. K. Gocher and Ms. J. Wardell 26/11/19: Will not object to revised proposals.
Dr. M. Beeson	Response received 17/6/19: consultation passed on to neighbours. Response received 9/9/19: objection to stopping-up of part of footpath 161 and request for link between footpath 161 and Louviers Road. Response received 26/11/19: consultation passed on to neighbours. Revised proposals address primary concerns and reservations. Concerns for the extinguishment of footpath 160 and the possibility of the obstruction of the proposed footpaths by parked cars. E mail received 13/2/20: Dr. Beeson will not object to revised proposed order.

Other responses received:

Name	Comments
Ms. C. Pinder Senior Archaeologist Dorset County Council	10/6/19: historic environment considerations do not constitute a constraint in the context of this proposal.
Mr D J Ackerley Senior Ranger Dorset Council.	10/6/19: No objection.
Ms. C. Shoopman British Horse Society	Response received 28/11/19: No objection
Ms. D. Heath Community Highways Team Leader Dorset Council	Response received 10/6/19: No objection.
Southern Gas Networks	Response received 17/6/19: Not affected
Atkins Global	Response received 13/6/19: No objection.
National Grid/Cadent	Response received 13/6/19: No objection.
Environment Agency	Acknowledgement Received 10/6/19
Cllr. T. Ferrari	Response received 18/6/19, 19/6/19 and 28/6/19: No objections raised
Cllr. L. O'Leary	Response received 23/6/19: No objections raised
F. H. Cummings Ltd.	Letter received: 29/7/19: No objection. E mail received 6/12/19: No objection to proposed changes.

Recommendations accepted:

Signed:

……V Penny…….. Date:……10 June 2020……

Vanessa Penny

Definitive Map Manager

Spatial Planning