

DOCUMENT REFERENCE 2

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 257 AND PARAGRAPH 1 OF SCHEDULE 14 WILDLIFE AND COUNTRYSIDE ACT 1981, SECTION 53A(2)

DORSET COUNCIL (PUBLIC FOOTPATH 24 (PART), 160, 161 (PART), 162 AND PUBLIC BRIDLEWAY 21 (PART), WEYMOUTH) PUBLIC PATH DIVERSION ORDER 2020

STATEMENT OF DORSET COUNCIL OF GROUNDS ON WHICH IT IS CONSIDERED THE ORDER SHOULD BE CONFIRMED

1. This statement relates to the Dorset Council (Public Footpath 24 (Part), 160, 161 (Part), 162 and Public Bridleway 21 (Part), Weymouth) Public Path Diversion Order 2020, ('the Order'). The Order contains a plan, ('the Plan').

2. The Order, including the Plan, is included with the Council's submission letter as **Document Reference 1**.

The Effect of the Order:

3. 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.

4. The length of Footpath 160 that would be diverted by the Order is shown on the plan as a bold line between points X and F. The proposed alternative length of footpath is shown as a broken black line between A and F. The alternative length of footpath would have a width of 2 metres and a grass surface.

5. 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.

6. 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.

7. 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 with a stone chipping surface dressing and part hoggin surface.

Background

8. An application for a 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. (Planning Application no. WP/17/00832), was considered by Weymouth and Portland Borough Council's Planning Committee on 6th June 2018 (**Appendix 1**)

9. Planning permission for the development was granted by Weymouth and Portland Borough Council. **Appendix 2** contains the minutes of the meeting. A copy of the decision notice dated 20th December 2018 and a plan showing the approved layout of the development is included as **Document Reference 14**.

10. At the time of the granting of planning permission, the site of the development was crossed by public Bridleway 21 and Footpath 24. However, there were a number of alleged additional unrecorded footpaths within the site, and these were the subject of an application from a member of the public to add them to the definitive map of public rights of way by means of a modification order under section 53 of the Wildlife and Countryside Act 1981. On the advice of the Council, Persimmon Homes dedicated as public rights of way the additional footpaths, now numbered as Footpaths 160, 161 and 162, which were the subject of this claim. As a consequence, these three paths have been included in the diversion order.

11. Persimmon Homes applied to Dorset Council on 3rd January 2020 for an order under section 257 of the Town and Country Planning Act 1990 to divert the paths to enable the development to take place. A copy of the application form is at **Appendix 3**.

12. The plan at **Document Reference 14** shows how Footpaths 24, 160, 161, 162 and Bridleway 21 will be affected by the development for which planning permission has been granted.

13. Weymouth and Portland Borough Council was abolished on 1 April 2019 and a new unitary authority, Dorset Council, was created including the area of the former Borough Council.

14. On 10th June 2020 a report on the revised proposal was considered by Matthew Piles, Corporate Director for Economic Growth and Infrastructure for Dorset Council, under the Council's Scheme of Delegation. He decided 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.

A copy of this report is at **Appendix 4**.

15. Included in section 4 of the report and as **Document Reference 8** are details of responses to consultations that were carried out by Dorset Council on the proposal to divert and stop-up the paths that would be affected by the development.

16. On 26 June 2020, in accordance with the resolution, Dorset Council made the order to divert Footpath 24 (part), 160, 161 (part), 162 and Bridleway 21 (part), Weymouth. (**Document Reference 1**)

17. Notice of the making of the Order was published in the Dorset Echo on 6 July 2020. (**Document Reference 5**). The notice of the Order and a copy of the Order was sent to the owners of the land, public rights of way user groups, Weymouth Town Council, utility companies and other interested parties. **Document Reference 9** contains a list of those persons and organisations to whom the Order and notice was sent. Copies of the notice and order plan were posted at the ends of the lengths of path to be diverted by the order. A copy of the Order and notice and was made available for viewing on Dorset Council's website, and at the Council's offices at Dorchester.

18. Six representations were received during the period provided by the notice of the making of the Order. All of these opposed the Order. One of these objections was subsequently withdrawn following correspondence and a meeting with the objector. The remaining five representations, which were sent to the Council by means of

letters and e mails, are included in full at **Document Reference 3**. A list of the names of those who have made the five outstanding objections is included at **Document Reference 3**.

The Law

Town and Country Planning Act 1990

19. The Order was made under section 257 of the Town and Country Planning Act 1990 because the Council is satisfied that it is necessary to stop-up and divert the paths in order to allow development to be carried out in accordance with planning permission granted under Part III of the Act.

20. The test for the confirmation of the Order, contained in section 257 (1) of the Act, is that the diversion or stopping-up is necessary to enable development authorised by planning permission to take place.

21. The Order would not come into force until the Council has certified that the alternative paths to be brought into being by the Order have been provided to the Council's satisfaction.

Wildlife and Countryside Act 1981

22. The Order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 because it appears to the authority that the County of Dorset Definitive Map and Statement require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the diversion (as authorised by this Order) of a highway hitherto shown or required to be shown in the map and statement.

Equality Act 2010

23. The Equality Act 2010 requires (broadly) that in carrying out their functions public authorities must make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from those functions as others would do, or to show that there are good reasons for not doing so.

24. The proposed alternative footpaths would not be more difficult for people to use than the existing paths. The new footpaths would be two metres wide, and the new bridleway four metres wide and have level and relatively smooth surfaces. There would be no barriers, stiles, gates or other structures across the paths.

Objections and other representations.

25. A total of 5 representations have been maintained in which objections have been made to the Diversion Order made on 26 June 2020.

26. Dorset Council's comments on the objections are contained in **Document Reference 4** of the Council's submission letter.

Summary of Grounds on which the Council believes the order should be confirmed

27. Section 257 of the Town and Country Planning Act 1990 enables a local authority to make an order to divert or stop-up of any footpath, bridleway or restricted byway if it is satisfied that it is necessary to do so in order to allow development to be carried out in accordance with planning permission granted under Part III of the Act. The test for the confirmation of the order, contained in section 257 (1) of the Act, is that the diversion is necessary to enable development authorised by planning permission to take place.

28. The Council has made the Diversion Order because it is satisfied that it is necessary to divert the paths to enable the development to be carried out in accordance with the grant of planning permission. The approved development provides for the construction of buildings and structures across the definitive lines of Bridleway 21, Footpath 160, Footpath 161 and Footpath 162. Footpath 24 is to be diverted a short distance to the west to accommodate the approved site layout, boundary treatments and landscaping. For the site to be constructed in accordance with the grant of planning permission, the diversion of the paths is necessary.

29. Section 257 does not provide a mechanism whereby objections to the Order may re-open considerations inherent in the grant of planning permission. None of the objections put forward information which challenges the test of the necessity to stop-up or divert the paths to enable the development to take place.

30. The Order provides for a network of alternative footpaths and bridleway which would be safe and convenient for use by the public. The alternative footpaths would have widths of two metres, and the alternative route for Bridleway 21 a width of four metres. The paths would be surfaced to a standard that would make them easily accessible to most users. The greater part of the alternative routes for Footpaths 160 and 161 would run within open space to the south of the built-up area of the development, and, in the context of the development for which planning permission has been granted and for which the Order has been made, the merits associated with the amenity opportunities for the public that may be provided by the alternative paths are considered to be of sufficient substance to warrant their acceptability as replacements for the lengths of footpath and bridleway to be diverted. The Council is satisfied that there will be no disadvantage or loss to members of the public, as a result of the Order, and that it retains a means of access which will meet the needs of local residents and other members of the public. In considering the impact of the Order, on the convenience and enjoyment of the public, it is submitted that the diverted routes would provide a pleasant circular walk, as well as relatively direct routes through and across the site. For these reasons, it is considered that the effect of the Order would not be to the detriment of the convenience, safety and welfare of path users.

31. It is submitted that proper consideration has been given to the provision of the alternative routes to be brought into being by the Order, and there is nothing in this regard to indicate that the Order should not be confirmed.

32. In summary, the alternative routes are suitable replacements for the existing footpaths and bridleway that would be diverted by the Order, and the diversion of the paths is necessary to enable the development to take place.

33. The Council asks that the objections be dismissed and the Order confirmed.

Appendix

1. Weymouth and Portland Borough Council's Planning Committee Report of 6th September 2018.

2. Minutes of Weymouth and Portland Borough Council's Planning Committee Report of 6th September 2018.

3. Application form for diversion order

4. Report of Mathew Piles Corporate Director for Economic Growth and Infrastructure of 10th June 2020