

**HIGHWAYS ACT 1980
WILDLIFE AND COUNTRYSIDE ACT 1981**

**DORSET COUNCIL
(FOOTPATH 51, DORCHESTER AND FOOTPATH 6, WINTERBORNE MONKTON)
PUBLIC PATH DIVERSION ORDER 2020**

**STATEMENT OF CASE
OF DORSET COUNTY COUNCIL**

1. This statement relates to the Dorset Council (Footpath 51, Dorchester and Footpath 6, Winterborne Monkton) Public Path Diversion Order 2020 ("the Order"). The Order contains a plan, drawing reference 18/20/1, ("the Plan"). The Order, including the Plan, is included as **Appendix 1**.

2. The effect of the Order is to divert Footpath 51, Dorchester and Footpath 6, Winterborne Monkton as shown on the order map as follows:

A – B ('the Existing Route of FP 51) to be diverted onto D – E – F – G – H – I – J ('the Proposed Route of FP 51')

B – B1 – C ('the Existing Route of FP 6') to be diverted onto J – K – L – M – N – O – P – Q – R ('the Proposed Route of FP 6')

The Existing Route of FP 51 and the Existing Route of FP 6 shall be referred to together as 'the Existing Routes'.

The Proposed Route of FP 51 and the Proposed Route of FP 6 shall be referred to together as 'the Proposed Routes'.

3. Photos of the affected routes are included at **Appendix 2**.

4. **Background**

- 4.1 An application was submitted in 2015 ('the Application') by the Duchy of Cornwall ('the Applicant'), to divert Footpath 6, Winterborne Monkton. It was later established that a second route, Footpath 51, Dorchester was affected by the proposed diversion and this was added to the Application.
- 4.2 Footpath 51, Dorchester and Footpath 6, Winterborne Monkton form a continuous footpath. The Existing Route of FP 51 runs from point A at Ladock Terrace across Middle Farm Way (the B3150) to the parish boundary at point B where it connects with Footpath 6, Winterborne Monkton. The Existing Route of FP 6 then crosses the A35 between point B and B1 and continues across a field to point C on the C53 road.
- 4.3 The walked route varies slightly from the current definitive line of the footpaths, and is indicated on Drawing 19/03 (**Appendix 3** (see Appendix 2 to the Report to the Strategic Planning Committee)). Footpath 51, Dorchester is not available between A – B but a walked route exists in close proximity. Similarly, Footpath 6, Winterborne Monkton cannot be used between points B and B1 but there is a crossing point just northwest of these points.
- 4.4 The Proposed Route of FP 51, runs from point D on Middle Farm Way, along a business park access road between points E – F – G then along a track to point H and

continuing south southwest along a track via point I to the parish boundary at point J. The Proposed Route of FP 6 then continues via an underpass under the A35 to point K and via points L and M to point N alongside the A35. The Proposed Route of FP 6 runs parallel to the A35 along a double fenced path to point O and then continues in a westerly direction via point O1 to point P and point Q where it turns northwest to join Bridleway 5, Winterborne Monkton at point R.

- 4.5 The combined length of the Existing Routes, between points A – B – B1 – C, is approximately 727 metres. The combined length of the Proposed Routes, between points D – E – F – G – H – I – J – K – L – M – N – O – O1 – P – Q – R, is approximately 1473 metres. The width of the Proposed Existing Routes will be 2 metres except at points I, M and P where there will be pedestrian gates to British Standard BS5709:2018.
- 4.6 It should be noted that Footpath 51, Dorchester was incorrectly identified as ‘Footpath 2’ in the consultation plan and letter. This error was amended on Drawing 18/20/1 as shown in Appendix 1 to the Report to the Strategic Planning Committee (‘the Committee Report’) (**Appendix 3**).
- 4.7 A pre-order public consultation was carried out in October 2018 and four objections were received, from The Open Spaces Society, The Ramblers, Cllr Roland Tarr, Dorset Council member for Winterborne and Broadmayne, and a local resident.
- 4.8 The Application was accepted by the Strategic Planning Committee (‘the Committee’) on 23 September 2019 who resolved that:
- 1) That the Application be accepted and an Order made subject to the following provisos:-
- a) That the hedge alongside a section of the Proposed Route of FP 6 between points O1 – P be either removed or cut back to the height of the fence before the Order comes into effect;
 - b) That new latch posts be installed for the 4 pedestrian gates at O and O1 (so that they can be locked open except when livestock are being moved across the footpath) before the Order comes into effect;
 - c) If the Order is confirmed, that the vegetation either side of the underpass be regularly inspected by the Council’s Ranger Team and the area is kept as open as possible.
- 2) That the Order include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion; and
- 3) If the Order is unopposed, or if any objections to the Order are of a similar nature to those already considered by the Committee, it be confirmed by the Council or submitted to the Secretary of State without further reference to the Committee.
- A copy of the Committee Report and minutes are at **Appendix 3**.
- 4.9 The Order was sealed on 25 September 2020 and published in the Dorset Echo on 19 November 2020.

- 4.10 Two objections were received to the Order, from the Ramblers and a local resident with a further two representations from Southern Gas Networks and a second local resident.
- 4.11 The Order was made in the interest of the landowner, although it was intended that the Order be made in the interest of both the landowner and the public, as discussed in the Committee Report see para 1.7:-

The primary reason for the diversion is public safety due to the danger of crossing the A35 between points B and B1. The proposed diversion offers walkers a safe route across the A35 via an underpass. The proposed diversion is also beneficial to the landowner as the new route follows existing tracks and field edge paths improving land management.

Dorset Council requests that the Inspector considers modifying the Order to make it in the interest of the public as well as the landowner. There is a strong public benefit since the diversion eradicates a dangerous road crossing. Although the definitive line is not available on the ground at the point at which it crosses the A35, since there is used route in close proximity to the definitive line, the OMA feel it is reasonable to infer that the issues relevant to the used route (which include the speed of traffic and volume of traffic) would apply to the definitive footpath if it were available on the ground. In fact, the definitive line B – B1 crosses the A35 on a diagonal making this crossing point more dangerous than the available route on the ground. However, the OMA consider that the Order meets the legal tests in the interest of the landowner alone should the Order not be modified.

5. The Law

Highways Act 1980

- 5.1 The Order was made under section 119 of the Highways Act 1980 on the basis that, in the interests of the owner of the land crossed by the path, it is expedient that the lines of the Existing Routes should be diverted (s119(1)). In particular, the Proposed Routes allow for better land management by moving the footpath from a cross field route to existing tracks and field edge paths.
- 5.2 Orders can also be made in the interest of the public (s119(1)).
- 5.3 Section 119(2) Highways Act 1980 provides that a diversion order should not alter a point of termination of a path unless the new termination point is on a highway and (where it is on a highway) only to another point which is on the same highway or a highway connected with it and which is substantially as convenient to the public.
- 5.3.1 The termination points for Footpath 51, Dorchester and Footpath 6, Winterborne Monkton (a continuous footpath) will be moved from point A on Ladock Terrace approximately 127 metres southeast to point D on Middle Farm Way and from point C adjacent the C53 approximately 26 metres southwest to point R which connects with Bridleway 5, Winterborne Monkton, which leads directly to the C53 road.
- 5.3.2 The Proposed Routes are expedient and would not result in footpaths that is substantially less convenient to the public.
- 5.3.3 The overall effect will be to increase the combined length of footpaths by 746 metres from 727 to 1473 metres. This increase in length should be assessed

against the safety and inconvenience of the Existing Routes which cross the A35. The crossing point has a 60mph speed limit and a high volume of traffic. The crossing point on the north eastern side of the A35 can only be accessed via a steep bund. The crossing cannot be easily used by wheelchair or mobility scooter users, pushchairs, or people with impaired mobility. It is also particularly hazardous for walkers with young children or dogs. The Proposed Route, which has been available on a permissive basis for several years, offers walkers a safe route using an existing underpass to cross the A35.

- 5.3.4 Many walkers are already using the Proposed Routes in preference to the Existing Routes.
- 5.4 In accordance with section 119(3) Highways Act 1980, the Order provides that the current and proposed footpaths will coexist until the works have been completed and certified. After certification the order would come into effect and a notice of coming into effect be advertised.
- 5.5 Section 121 Highways Act 1980 provides that section 29 applies to diversion orders and accordingly, imposes a duty on the Council to have due regard to:
 - 5.5.1 the needs of agriculture (which includes the breeding or keeping of horses) and forestry, and
 - 5.5.2 the desirability of conserving flora, fauna and geological and physiographical features.
- 5.6 There is no suggestion that the diversion will have an adverse effect on agriculture forestry, flora, fauna and geological and physiographical features.
- 5.7 Section 119(6) Highways Act 1980 provides that the Secretary of State shall not confirm a public path diversion order unless they are satisfied that:
 - 5.7.1 the diversion to be effected by it is expedient as mentioned in section 119(1) Highways Act 1980; and further
 - 5.7.2 that the path or way will not be substantially less convenient to the public in consequence of the diversion; and
 - 5.7.3 that it is expedient to confirm the order having regard to the effect which:
 - 5.7.3.1 the diversion would have on public enjoyment of the path or way as a whole;
 - 5.7.3.2 the coming into operation of the order would have as respects other land served by the existing public right of way; and
 - 5.7.3.3 any new public right of way would have as respects the land over which the right is so created and any land held with it.
- 5.8 Expedient as mentioned in section 119(1)
 - 5.8.1 Please see paragraph 5.1 above.
- 5.9 Not substantially less convenient to the public in consequence of the diversion:

- 5.9.1 The Council submits that the Proposed Routes will not be substantially less convenient to the public.
- 5.9.2 Whilst the Proposed Routes are, in total, 746 metres longer than the Existing Routes, the Proposed Routes are much more convenient to use. Please see paragraph 5.3.3 above
- 5.10 Expedient to confirm the order having regard to the effect on public enjoyment of the path as a whole.
- 5.10.1 The diversion would have no effect on the enjoyment by the public of the route as a whole and would be beneficial to land currently served by the path
- 5.11 Expedient to confirm the order having regard to the effect as respects other land served by the existing public right of way and as respects the land over which the new right is created and any land held with it.
- 5.11.1 The proposed new routes are existing routes and therefore would have no adverse effect on the land over which the new paths run and land held with it.
- 5.11.2 The proposed diversion affects only the land of the Applicant and therefore it is not anticipated that any compensation will be payable under Section 28 of the Highways Act 1980. The tenant farmer is in full support of the proposed diversion which will enable better land management.

Equality Act 2010

- 5.12 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.
- 5.13 The crossing point on the north eastern side of the A35, point B – B1 on the Existing Routes, can only be accessed via a steep bund. The crossing cannot be easily used by wheelchair or mobility scooter users, pushchairs, or people with impaired mobility. It is also particularly hazardous for walkers with young children or dogs. The Proposed Route, which has been available on a permissive basis for several years, offers walkers a safe route using an existing underpass to cross the A35. The only limitations of the Proposed Routes are 3 pedestrian gates (all to BS5709:2018).

6. Rights of Way Improvement Plan

- 6.1 The order fulfils the following objectives in the Rights of Way Improvement Plan (Document Reference 16) to improve Dorset's network of Public Rights of Way, wider access and outdoor public space:
- 6.1.1 Theme 1.6 Improve accessibility of the network
- 6.1.2 Theme 3.9 Identify road severance locations and seek opportunities to make improvements
- 6.1.3 Theme 3.10 Work with partners to address road safety and incorporate PRow into various initiatives

- 6.1.4 Theme 3.11 Seek opportunities to develop networks of paths and public outdoor space consisting of attractive, safe off-road routes enabling people of all ages, needs and abilities to walk/ride safely in and around their village/town, out to neighbouring settlements and into and about the wider countryside

7. Objections and other representations

- 7.1 Two objections were received to the Order. Copies of the objections can be found at **Document Reference 5**.
- 7.2 The Council's comments on the objections are **Document Reference 6** of the Council's submission letter to the Planning Inspectorate dated 10th January 2023.

8. Summary

- 8.1 The Council submits that the diversion of Footpath 51, Dorchester and part of Footpath 6, Winterborne Monkton), from the Existing Routes to the Proposed Routes is expedient in the interests of the landowner; is not substantially less convenient to the public and has an overall positive effect on public enjoyment of the path as a whole.
- 8.2 The Council also submits that the Order should have also been made in the interests of the public and if the Inspector is minded to do so, the Order could be modified to reflect this.
- 8.3 The Council is of the opinion that the objections do not contain any grounds to warrant the non-confirmation of the Order.

9. Conclusion

- 9.1 The Council considers that the requirements of section 119(6) Highways Act 1980 are satisfied and submits that the Order should be confirmed as made or confirmed with the addition of the modification requested in 4.11 above.