

Regulatory Committee

Dorset County Council



Date of meeting	21 March 2019
<u>Local Member</u> Cllr Cherry Brooks - Member for South Purbeck <u>Lead Officer</u> Matthew Piles, Service Director, Environment, Infrastructure & Economy	
Subject of report	Application for a public path order to divert part of Footpath 34, Corfe Castle
Executive summary	This report considers an application to divert part of Footpath 34, Corfe Castle at Corfe Castle Primary School as shown on Drawing 18/26/1. Corfe Castle Primary School is owned by Dorset County Council. As a matter of practice, Public Path Order applications affecting Dorset County Council owned land, whether or not objections are received to the pre-order consultation, are considered by the Regulatory Committee.
Applicant	Dorset County Council (Estate and Assets)
Impact Assessment:	Equalities Impact Assessment: There is no furniture on the proposed route. The gradient and surface of the new route meet Dorset County Council's standards for new footpaths. Use of Evidence: The applicant consulted the local Parish Council and key user groups before submitting the application in order to establish whether the proposals would have support.

	<p>A full consultation exercise was carried out in November / December 2018 involving user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. The County Councillor for South Purbeck, Cllr Cherry Brooks, was also consulted. In addition notices explaining the application were erected on site. Comments received are discussed in this report.</p> <p>Budget :</p> <p>The applicant has agreed to pay in accordance with the County 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 the County 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.</p> <p>Risk Assessment:</p> <p>Having considered the risks associated with this decision using the County Council's approved risk management methodology, the level of risk has been identified as: Current Risk: LOW Residual Risk: LOW</p> <p>Other implications:</p> <p>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.</p> <p>Property and Assets – The proposal will improve land management of the School by moving a public right of way out of an enclosed hard court.</p> <p>Voluntary Organisations – n/a</p> <p>Public Health / Physical Activity – Improvements to the public rights of way network benefit public health by increasing opportunities for walking.</p> <p>Community Safety – n/a</p>
<p>Recommendations</p>	<p>That:</p> <p>(a) The application to divert part of Footpath 34, Corfe Castle from V1 – V – W – X – Y to Z – Y be accepted and an order made;</p> <p>(b) The Order include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion; and</p>

	(c) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to the Committee.
Reasons for Recommendations	<p>(a) The proposed diversion meets the legal criteria set out in the Highways Act 1980.</p> <p>(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.</p> <p>(c) Accordingly, the absence of objections may be taken as acceptance that the proposed new route is expedient and therefore the County Council can itself confirm the order.</p> <p>Decisions on applications for public path orders ensure that changes to the network of public rights of way comply with the legal requirements and supports the Corporate Plan 2017-19 Outcomes Framework:</p> <p>People in Dorset are Healthy:</p> <ul style="list-style-type: none"> • To help and encourage people to adopt healthy lifestyles and lead active lives • We will work hard to ensure our natural assets are well managed, accessible and promoted. <p>Dorset's economy is Prosperous:</p> <ul style="list-style-type: none"> • To support productivity we want to plan communities well, reducing the need to travel while 'keeping Dorset moving', enabling people and goods to move about the county safely and efficiently <p>Before confirming a public path creation, diversion or extinguishment order a council or the Secretary of State must have regard to any material provision of a rights of way improvement plan prepared by the local highway authority. Dorset's Rights of Way Improvement Plan sets out a strategy for improving its network of Public Rights of Way, wider access and outdoor public space.</p>
Appendices	<p>1 - Drawing 18/26/1</p> <p>2 - Summary of consultation responses</p>
Background Papers	The file of the Service Director, Highways and Emergency Planning (ref. RW/P157)
Officer Contact	<p>Carol McKay Definitive Map Technical Officer Planning and Regulation Team, Tel: (01305) 225136 email: c.a.mckay@dorsetcc.gov.uk</p>

1 **Background**

- 1.1 The County Council has received an application from the Estate and Assets service within Dorset County Council to divert part of Footpath 34, Corfe Castle as shown on Drawing 18/26/1 attached as Appendix 1.
- 1.2 Following planning permission for and construction of an enclosed hard court at Corfe Castle Primary School, it was identified that Footpath 34 needed to be diverted. Due to time constraints it was not possible to divert the footpath under the Town and Country Planning Act 1990.
- 1.3 It is therefore necessary to divert Footpath 34 under the Highways Act as the route is now obstructed.
- 1.4 In practice there are several public footpaths through the playing fields and a usable route has always been available.
- 1.5 An initial proposal to divert Footpaths 34 and 35 (consulted on in November 2015) was revised following objections.
- 1.6 A second consultation was carried out in March 2016 on a revised proposal to divert Footpath 34, Corfe Castle.
- 1.7 The revised proposal received objections from the Open Spaces Society and Corfe Castle Parish Council.
- 1.8 A third consultation was carried out in November / December 2018.
- 1.9 The current proposal to divert Footpath 34, Corfe Castle is shown on Drawing 18/26/1 attached as Appendix 1.
- 1.10 The current definitive route of Footpath 34, Corfe Castle runs from its junction with Footpath 19, Corfe Castle at point V1 to point V then through the Castle Inn's car park and garden to point W where it enters the school playing field, through a fenced hard court to point X and continuing to point Y where it joins Footpath 35.
- 1.11 The section of Footpath 34 between points V1 and V is also recorded as part of Footpath 19 and therefore the proposed diversion will resolve this instance of dual recording.
- 1.12 The proposed new route of Footpath 34 is 2 metres wide and runs from its junction with Footpath 19 at point Z, along the eastern edge of the hard court to point Y where it joins the existing routes of Footpath 34 and Footpath 35.
- 1.13 The footpath crosses land owned by Corfe Castle Primary School and The Castle Inn public house.
- 1.14 The proposed diversion is beneficial to both affected landowners as the current footpath crosses the corner of the Castle Inn's garden and car park and is obstructed by an enclosed hard court in the school's playing fields.

2 Law

Highways Act 1980

- 2.1 Section 119 of the Highways Act 1980 allows a footpath or bridleway (or part of one) to be diverted in the interests of the landowner, lessee or occupier or of the public, subject to certain criteria.
- 2.2 A diversion cannot alter the termination point of the path if the new termination point: -
- (i) is not on a highway; or
 - (ii) (where it is on a highway) is otherwise than on the same highway or a connected highway, which is substantially as convenient to the public.
- 2.3 A public path diversion order cannot be confirmed as an unopposed order unless the County Council are satisfied that:
- (a) in the interests of the owner, lessee or occupier or of the public, the diversion to be effected by it is expedient;
 - (b) the diversion would not result in a path that is substantially less convenient to the public;
- and that it is expedient to confirm the order having regard to:
- (c) the effect the diversion would have on public enjoyment of the footpath as a whole;
 - (d) the effect the diversion would have on other land served by the footpath; and
 - (e) the effect on the land over which the diversion will run and any land held with it.
- 2.4 Section 29 of the Highways Act 1980, as amended by Section 57 of the Countryside and Rights of Way Act 2000, says that when making diversion orders the County Council must have regard to the needs of agriculture, forestry and nature conservation and the desirability of conserving flora, fauna and geological and physiographical features. "Agriculture" includes the breeding and keeping of horses.
- 2.5 Section 119(3) of the Highways Act 1980 as amended by the Countryside and Rights of Way Act 2000 provides that the extinguishment of the existing public right of way "is not to come into force until the local highway authority for the new path or way certify that the work has been carried out".
- 2.6 The County Council may itself confirm the order if it is unopposed. If it is opposed it may be sent to the Secretary of State for confirmation.

Wildlife and Countryside Act 1981

- 2.7 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

- 2.8 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.

- 2.9 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.

- 2.10 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.

2.11 Rights of Way Improvement Plan

- 2.12 Dorset County Council's Rights of Way Improvement Plan (ROWIP) is a statutory document setting out a strategy for improving its network of Public Rights of Way, wider access and outdoor public space.

- 2.13 Before confirming a public path creation, diversion or extinguishment order a council or the Secretary of State must have regard to any material provision of a rights of way improvement plan prepared by the local highway authority.

- 2.14 Five themes have been identified for improving access in Dorset of which the following are particularly relevant to the present case and should be considered in relation to this application:

Theme 1: The ROWIP's links with other strategies

- Theme 1.6 Improve accessibility of the network

3 Compliance with the law

- 3.1 The proposed diversion is in the interest of the landowners due to the obstructions along the route.

- 3.2 The south eastern termination point of Footpath 34 is unaffected. The north western termination point will be moved from point V1 at its junction with Footpath 19 and East Street to point Z, approximately 90 metres east, maintaining its connection with Footpath 19.

- 3.3 If the order is unopposed the order should be confirmed as the diverted route is expedient and would not result in a path that is substantially less convenient to the public.
- 3.4 Accordingly, the current route of Footpath 34 between V1 – V – W – X – Y is approximately 123 metres in length and the proposed new route between Z – Y is approximately 77 metres. This change reduces the overall length of footpath for walkers continuing to the east via Footpath 19, but increases it slightly for those walking west via Footpath 19.
- 3.5 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. As an existing used route it would have no adverse effect on the land over which the new path runs and land held with it.
- 3.6 The diversion will have no adverse effect on agriculture, forestry, flora, fauna and geological and physiographical features.
- 3.7 In addition to the applicant's land, the diversion affects land belonging to the Castle Inn, whose owners have agreed to the proposals and therefore no compensation is payable under Section 28 of the Highways Act 1980.
- 3.8 No works are needed to improve the proposed diverted route for use by the public.
- 3.9 The order fulfils the following objectives in the Rights of Way Improvement Plan to improve Dorset's network of Public Rights of Way, wider access and outdoor public space:
- Theme 1.6 Improve accessibility of the network
- 3.10 Therefore, if no objections are received the Order should be confirmed by the County Council.

4 Consultation

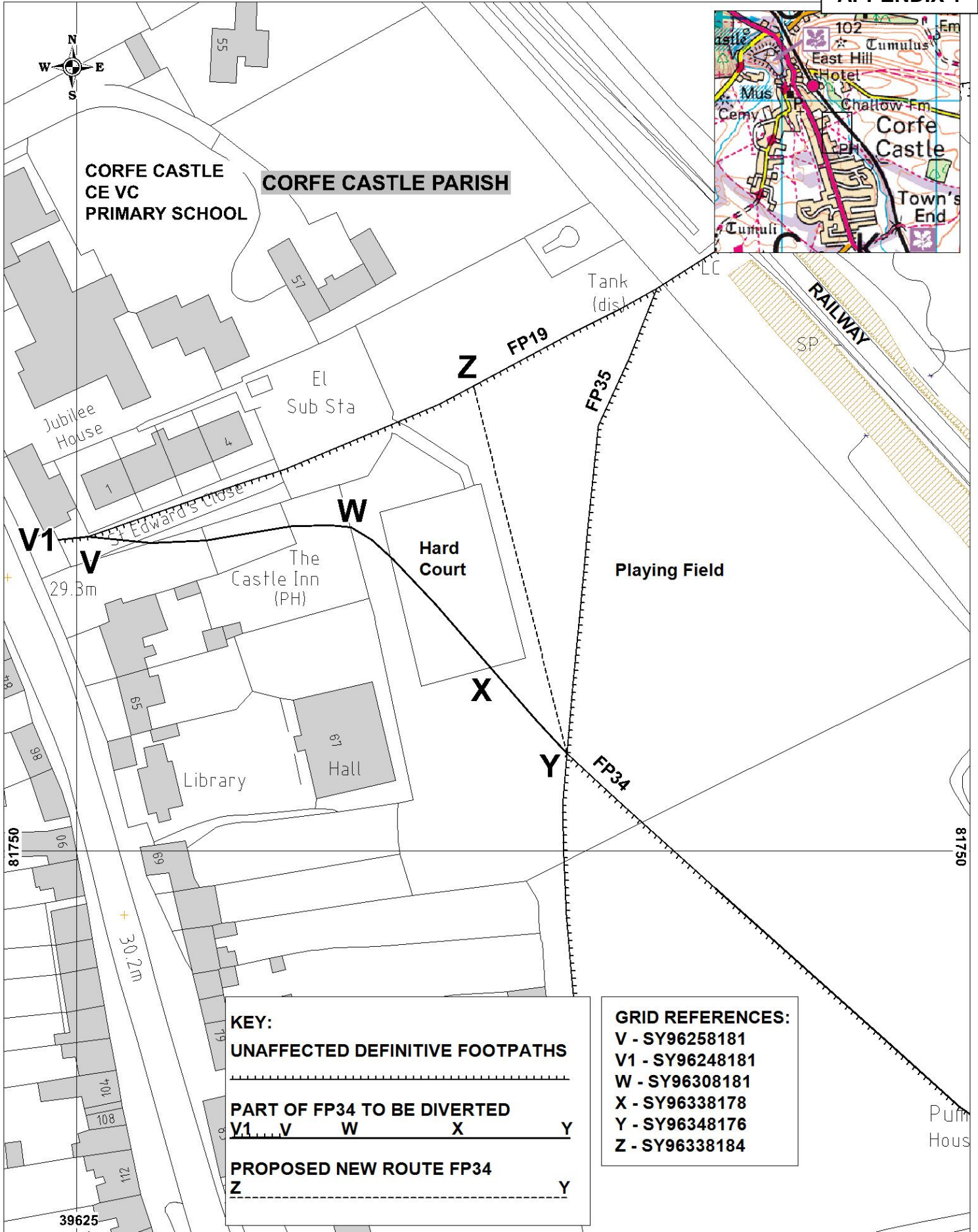
- 4.1 The County Councillor for South Purbeck, Cllr Cherry Brooks, was consulted on the application and made no comment.
- 4.2 A summary of consultation responses is included in Appendix 2.
- 4.3 No objections have been received.

5 Conclusions

- 5.1 All Public Path Order applications affecting Dorset County Council owned land, whether or not objections are received to the pre-order consultation, must be considered by the Regulatory Committee, in the interests of transparency.
- 5.2 The application to divert part of Footpath 34, Corfe Castle meets the tests set out under the Highways Act 1980 and therefore should be accepted and an order made.
- 5.3 The Order should include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion.

- 5.4 If there are no objections to a public path order, as the criteria for confirmation have been met the order should be confirmed.

Matthew Piles
Service Director, Environment, Infrastructure & Economy
March 2019



KEY:

UNAFFECTED DEFINITIVE FOOTPATHS

PART OF FP34 TO BE DIVERTED
 V1...V W X Y

PROPOSED NEW ROUTE FP34
 Z Y

GRID REFERENCES:

V - SY96258181
 V1 - SY96248181
 W - SY96308181
 X - SY96338178
 Y - SY96348176
 Z - SY96338184

**SECTION 119, HIGHWAYS ACT 1980
 APPLICATION FOR A PUBLIC PATH ORDER
 TO DIVERT FOOTPATH 34 CORFE CASTLE**

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref:18/26/1
 Date: 15/01/2019
 Scale 1:1000
 Drawn By: CAM
 Cent X: 396333
 Cent Y: 81797

GEOGRAPHICAL INFORMATION SYSTEMS

Dorset County Council

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Summary of consultation responses

Name	Comments
Corfe Castle Parish Council	Have considered the revised plans and are happy with the proposed diversion.
The Ramblers	<p>No objection to the proposed diversion, subject to the path remaining unfenced. Reports an obstruction on Footpath 34 and requests it be cleared before any Order is made.</p> <p>OFFICER COMMENT: There are no proposals for the new route of Footpath 34 to be fenced and it would be impractical to do so through the middle of the playing field. However, it is not possible to impose a restriction on fencing rights of way in a diversion order. With regards to the obstruction of Footpath 34, this has been passed to the Senior Ranger for action, but it is on the unaffected part of Footpath 34 and at the boundary of the applicant's land and therefore not within the scope of the proposal.</p>
Open Spaces Society	Supports the proposal.
Senior Ranger, Dorset County Council	Supports proposed diversion which will enhance the route for the public and increase convenience for users