

# Regulatory Committee

**Dorset County Council**



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| Date of meeting   | 21 March 2019   |
| <u>Local Member(s):</u><br>Cllr Keith Day - Member for Bridport<br>Cllr Mark Roberts - Member for Bridport<br><u>Lead Officer</u><br>Matthew Piles, Service Director, Environment, Infrastructure & Economy |   |
| <b>Subject of report</b>  | <b>Application for a public path order to extinguish part of Footpath 34, Powerstock</b>  |
| Executive summary   | This report considers an application to extinguish part of Footpath 34, Powerstock at Powerstock Primary School as shown on Drawing 18/29. Powerstock Primary School is owned by Dorset County Council.   |
| Applicant   | Powerstock Primary School   |
| Impact Assessment:  | Equalities Impact Assessment:<br>n/a<br>Use of Evidence:<br>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.<br>A full consultation exercise was carried out in January 2019 involving user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. The County Councillors for Bridport, Cllr Keith Day and Cllr Mark Roberts, were also consulted. In addition notices explaining the application were erected on site.<br>Comments received are discussed in this report. |

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|                             | <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:<br/> Current Risk: LOW<br/> Residual Risk: LOW</p> <p>Other implications:</p> <p>Sustainability –<br/> The proposal will not have any effect on carbon emissions and supports alternative methods of travel to the car.<br/> 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 extinguishing a public right of way from its playground.</p> <p>Voluntary Organisations – n/a<br/> Public Health – n/a<br/> Physical Activity – n/a<br/> Community Safety – n/a</p> |
| Recommendations             | <p>That:</p> <p>(a) The application to extinguish part of Footpath 34, Powerstock from A – B – C – D – E 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 extinguishment; and</p> <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.</p>   |
| Reasons for Recommendations | <p>(a) The proposed extinguishment 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 extinguishment.</p>  |

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|                   | <p>(c) Accordingly, the absence of objections may be taken as acceptance that extinguishment 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 <b>Healthy</b>:</p> <ul style="list-style-type: none"> <li>• To help and encourage people to adopt healthy lifestyles and lead active lives</li> <li>• We will work hard to ensure our natural assets are well managed, accessible and promoted.</li> </ul> <p>Dorset's economy is <b>Prosperous</b>:</p> <ul style="list-style-type: none"> <li>• 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</li> </ul> <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 - <a href="#">Drawing 18/29</a><br/> 2 - <a href="#">Summary of consultation responses</a></p>  |
| Background Papers | <p>The file of the Service Director, Environment, Infrastructure &amp; Economy (ref. RW/P195)</p>  |
| Officer Contact   | <p>Carol McKay<br/> Definitive Map Technical Officer<br/> Planning and Regulation Team<br/> Tel: (01305) 225136<br/> email: <a href="mailto:c.a.mckay@dorsetcc.gov.uk">c.a.mckay@dorsetcc.gov.uk</a></p>   |

## 1 **Background**

- 1.1. The County Council has received an application from Powerstock Primary School to extinguish part of Footpath 34, Powerstock as shown on Drawing 18/29 attached as [Appendix 1](#).
- 1.2. Powerstock Primary School is owned by Dorset County Council.
- 1.3. The current definitive route of Footpath 34, Powerstock runs from point A on School Hill, where it enters the grounds of Powerstock Primary School passing northwest through the playground to point B, continuing generally north northwest via point C to point D, then entering the garden of 'The Old School House', running alongside the house to point E, and continuing northeast to point F where it connects with Pig Lane and Bridleway 29, as shown on Drawing 18/29.
- 1.4. The affected section of Footpath 34 is approximately 118 metres long. Footpath 34 is partially obstructed by a building between points B and C, a fence at point D and a locked gate at point E, but there is a usable route between point B and point C which then continues northeast to Pig Lane.
- 1.5. The application was made because Footpath 34, Powerstock is not needed for public use due to the close proximity of an alternative route, along School Hill, and Pig Lane. Both are quiet lanes, suitable for pedestrians.
- 1.6. The Statutory Inspection of Anglican and Methodist Schools (SIAMS) Inspector and the school governors have raised concerns about the footpath running through the school grounds as it creates a safeguarding issue which can be resolved by the extinguishment of the route.

## 2 **Law**

### Highways Act 1980

- 2.1 Section 118 of the Highways Act 1980 says that the County Council may, by order, extinguish a path when it appears to them to be expedient to do so, on the ground that it is not needed for public use.
- 2.2 A public path extinguishment order cannot be confirmed as an unopposed order unless the County Council are satisfied that it is expedient to do so:
  - (a) having regard to the extent (if any) that the path is likely to be used by the public; and
  - (b) having regard to the effect the extinguishment would have on other land served by the footpath;
- 2.3 Any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

- 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 extinguishment 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 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

- 2.6 Section 53A of the Wildlife and Countryside Act 1981 enables provisions to amend the definitive map and statement required by virtue of an extinguishment order to be included in the extinguishment 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.

#### Rights of Way Improvement Plan

- 2.10 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.
- 2.11 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 ROWIP prepared by the local highway authority.
- 2.12 None of the ROWIP's five themes identified for improving access in Dorset are relevant to the present case.

### **3 Consultation**

- 3.1 The County Councillors for Bridport, Cllr Keith Day and Cllr Mark Roberts were consulted on the application and made no comment.
- 3.2 A summary of consultation responses is included in [Appendix 2](#).

### **Objection**

- 3.3 One objection was received, outside of the consultation period.
- 3.4 The objector states that the footpath is used by people walking between the centre of the village and the school and village hall and is a safer route than School Hill which is “narrow and busy”.

### **Officers’ comments**

- (a) Access to the Powerstock Hut (indicated on Drawing 18/29) will continue, on a permissive basis, via the main front gate at point A. Powerstock School rents the hut on a daily basis 9am – 4.30pm during term time. Any events that the Hut wishes to hold during that time are agreed in advance (e.g. funerals, polling days etc).
- (b) The school playground is used as a car park when events are held at the Hut with access via a vehicular gate which reduces congestion on School Hill.
- (c) Footpath 34 is currently obstructed between points D and E. The route referred by the objector “between the centre of the village and the school and village hall” is not on the definitive route of Footpath 34.
- (d) The alternative routes along Pig Lane and School Hill are considered to be quiet and therefore suitable for walkers.

## **4 Discussion**

- 4.1 The proposed extinguishment is expedient as the current footpath is not needed for public use.
- 4.2 The footpath provides an off road link between School Hill and Pig Lane; it is effectively a ‘short cut’. There is a reasonable alternative route via quiet village lanes. As the route is short and there is a reasonable alternative route, officers consider that the route is not needed and so the extinguishment is expedient.
- 4.3 The path is used by the public and the school reports that during term time it has observed occasional use of the footpath by walkers, including groups. Officers consider that the level of use in this location is minimal.
- 4.4 Land served by the path is not adversely affected by the removal of the public right of way. Private rights of access through the school will be unaffected. This includes any arrangements with neighbouring properties, and permissive access to the Powerstock huts.
- 4.5 The extinguishment will have no adverse effect on agriculture, forestry, flora, fauna and geological and physiographical features.

4.6 The proposed extinguishment affects the applicant's lands and land belonging to the owners of 'The Old School House' who have agreed to the extinguishment and therefore no compensation is payable under Section 28 of the Highways Act 1980.

4.7 Therefore, it is expedient to confirm the Order and so if no objections are received the Order should be confirmed by the County Council.

## 5 **Conclusions**

5.1 The application to extinguish part of Footpath 34, Powerstock meets the tests set out under the Highways Act 1980 and therefore should be accepted and an order made.

5.2 The Order should include provisions to modify the definitive map and statement to record the changes made as a consequence of the extinguishment.

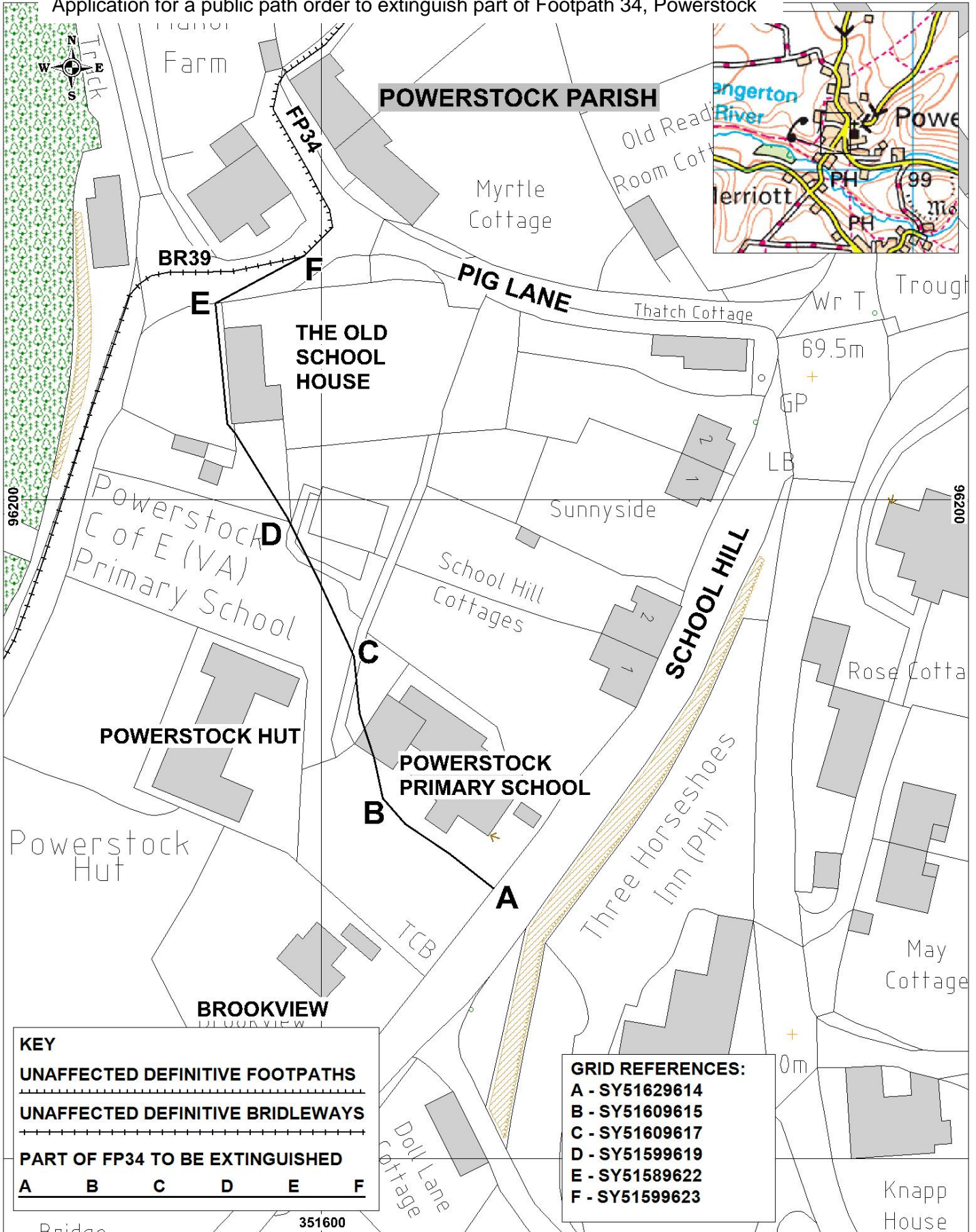
5.3 If there are no objections to a public path order, as the criteria for confirmation have been met the order should be confirmed.


### **Matthew Piles**

Service Director, Environment, Infrastructure & Economy

**March 2019**

Application for a public path order to extinguish part of Footpath 34, Powerstock



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| <p><b>SECTION 118, HIGHWAYS ACT 1980</b></p> <p><b>APPLICATION TO EXTINGUISH PART OF FOOTPATH 34, POWERSTOCK AT POWERSTOCK PRIMARY SCHOOL</b></p> <p><b>THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS</b></p> | <p><b>Ref: 18/29</b></p> <p>Date: 14/12/2018</p> <p>Scale 1:750</p> <p>Drawn By: CAM</p> <p>Cent X: 351625</p> <p>Cent Y: 96182</p> | <p>GEOGRAPHICAL INFORMATION SYSTEMS</p>  <p><b>Dorset County Council</b></p> <p><small>© Crown copyright and database rights 2018 Ordnance Survey 100019790. You are permitted to use this data solely to enable you to respond to, or interact with, the organisation that provided you with the data. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form. Aerial Photography © UK Perspectives 2002 © Getmapping 2005, 2009 &amp; 2014</small></p> |
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## Summary of consultation responses

### Objection

| Name  | Comments   |
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| Ms B<br>(received outside of the consultation period) | Objects on the basis that the footpath enables people to walk from the centre of the village to the school and village hall "without `walking down School Hill which is a narrow and busy road". Footpath 34 is a much safer option. |

### Other responses

| Name                         | Comments  |
|------------------------------|---|
| Southern Gas Networks        | No objection – plan supplied indicates no apparatus                                     |
| Western Power Distribution   | No objection – plan supplied indicates apparatus in area                                |
| West Dorset District Council | No objection  |
| British Horse Society        | No objection  |
| The Ramblers                 | As per pre-application consultation response, have no objection to this extinguishment. |