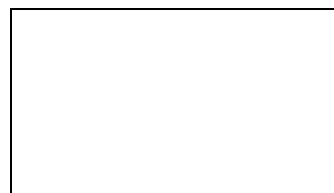


Agenda item:

Regulatory Committee



Dorset County Council



Date of meeting	5 January 2017
<u>Local Member(s):</u> Cllr Pauline Batstone - Member for Blackmore Vale <u>Lead Officer</u> Carol McKay, Definitive Map Technical Officer (Public Path Orders)	
Subject of report	Application to divert parts of Footpaths 11 and 29, Mappowder at Lower Thurnwood Farm
Executive summary	This report considers an application to divert parts of Footpaths 11 and 29, Mappowder at Lower Thurnwood Farm as shown on Drawing 16/04. Lower Thurnwood Farm is owned by the County Council as part of the County Farms Estate. 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 Service)
Impact Assessment:	Equalities Impact Assessment: The furniture on the proposed route meets the requirements of British Standard BS5709:2006. 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. A full consultation exercise was carried out in September 2016 involving user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this application. The County Councillor for Blackmore Vale, Cllr Batstone, was also consulted. In addition notices explaining the application were erected on site. Comments received have been discussed in this report.

	<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>As the subject matter of this report is the determination of a public path diversion order the County Council's approved Risk Assessment Methodology has not been applied.</p> <p>Other implications:</p> <p>Sustainability –</p> <p>The proposal will not have any effect on carbon emissions and supports alternative methods of travel to the car.</p> <p>Any work to the new route will use natural resources from local suppliers.</p> <p>Use of public rights of way promotes a healthy balanced lifestyle.</p> <p>Property and Assets – The proposal improves land management of the County Farm and increases its value by moving public rights of way from buildings and farmyards onto safer usable routes.</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 – The new routes are safer than the current routes as they do not pass through working farmyards and buildings.</p>
<p>Recommendations</p>	<p>That:</p> <p>(a) The application to divert part of Footpath 11, Mappowder from A – B – C to A – E – F – G – H – C and part of Footpath 29, Mappowder from B – D to C – I – J – K – D as shown on Drawing 16/04 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 diversions; 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>

<p>Reasons for Recommendations</p>	<p>(a) The proposed diversions meet 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 routes are 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 achieves the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> • Work in partnership to ensure the good management of our natural and historic environment • Work with partners and communities to maintain cycle paths, rights of way and disabled access • Encourage tourism to our unique county • Support community transport schemes <p>Promoting Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> • Actively promote physical activity and sport • Develop and maintain safe, convenient, efficient and attractive transport and green infrastructure that is conducive to cycling and walking • Improve the provision of, and access to, green, open spaces close to where people live <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>
<p>Appendices</p>	<p>1 - Drawing 16/04 2 - Table summarising consultation responses</p>
<p>Background Papers</p>	<p>The file of the Service Director Highways (ref. RW/P155)</p>
<p>Report Originator and Contact</p>	<p>Carol McKay Definitive Map Technical Officer (Public Path Orders) Regulation Team, Dorset Highways Tel: (01305) 225136 email: c.a.mckay@dorsetcc.gov.uk</p>

1 Background

- 1.1 The County Council has received an application from the Estates and Assets Service of the County Council to divert parts of Footpaths 11 and 29, Mappowder at Lower Thurnwood Farm, as shown on Drawing 16/04 attached as Appendix 1.
- 1.2 Lower Thurnwood Farm is owned by the County Council as part of the County Farms Estate and is farmed by the tenant, Nick Tuke, who has agreed to the proposed diversions.
- 1.3 The current definitive route of Footpath 11, Mappowder runs from point A, north east of Lower Thurnwood Farm, west south west across a field, over a road then across a second field and through a farm building to point B before turning northwest through more buildings to point C.
- 1.4 The proposed new route of Footpath 11 runs from point A west across a field to point E, over a road to point F and then follows the field edge to the north east and north of Lower Thurnwood Farm, generally west via point G to point H where it crosses into a small field and continues to point C.
- 1.5 The current definitive route of Footpath 29, Mappowder runs from point B, through the farmyard to point D on a farm track.
- 1.6 The proposed new route of Footpath 29 runs from point C just to the north of the farm buildings, through a small field south west to point I and then continues into another field at point J, following the field edge south via point K to point D.
- 1.7 The proposed new routes of Footpaths 11 and 29 will be 2 metres wide.
- 1.8 The proposed diversion is beneficial to the landowner as the current routes pass through several agricultural buildings and a working farmyard.

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, in the interests of the owner, lessee or occupier or of the public:
 - (a) 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 two 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

Theme 3: Providing a safer and more accessible network

- 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

3 **Compliance with the law**

3.1 The proposed diversion is in the interest of the landowner as the current routes of Footpaths 11 and 29, Mappowder pass through several agricultural buildings and cross a busy working farmyard and the new routes will run through fields.

3.2 The termination points of Footpath 11, Mappowder are unaffected by the diversion. The eastern termination point of Footpath 29, Mappowder would be moved from its junction with Footpath 11, Mappowder at point B to point C, therefore retaining the connection with this footpath in a position that is substantially as convenient to the public.

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 and the other requirements of the legislation are met.

3.4 The current route of Footpath 11, Mappowder as shown A – B – C is approximately 272 metres long and the proposed new route A – E – F – G – H – C is approximately 252 metres long. The current route of Footpath 29, Mappowder as shown B – D is approximately 59 metres long and the proposed new route from C – I – J – K – D is approximately 68 metres long. The proposed diversions would therefore increase the length of the affected footpaths by just 11 metres.

- 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 The proposed diversion affects only the applicant's land and therefore no compensation is payable under Section 28 of the Highways Act 1980.
- 3.8 The following works have already been completed on the new footpaths:
- 1.2 metre pedestrian gates either end of bridge at point E
 - 1.2 metre pedestrian gates at points F, H and L
 - Field gate at point J
- 3.9 All furniture complies with British Standard BS5709:2006
- 3.10 Some works will have to be carried out on the new route to improve it for public use:
- Surface of the new routes F – G and H – C – I to be improved
 - Bridge at point E to be widened to 1 metre
 - The surfacing works will be carried out and funded by the landowner
 - The works to the bridge will be carried out by Dorset County Council
- 3.11 The order will be confirmed only on completion of these works. 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.
- 3.12 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
 - 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.

4 Consultation

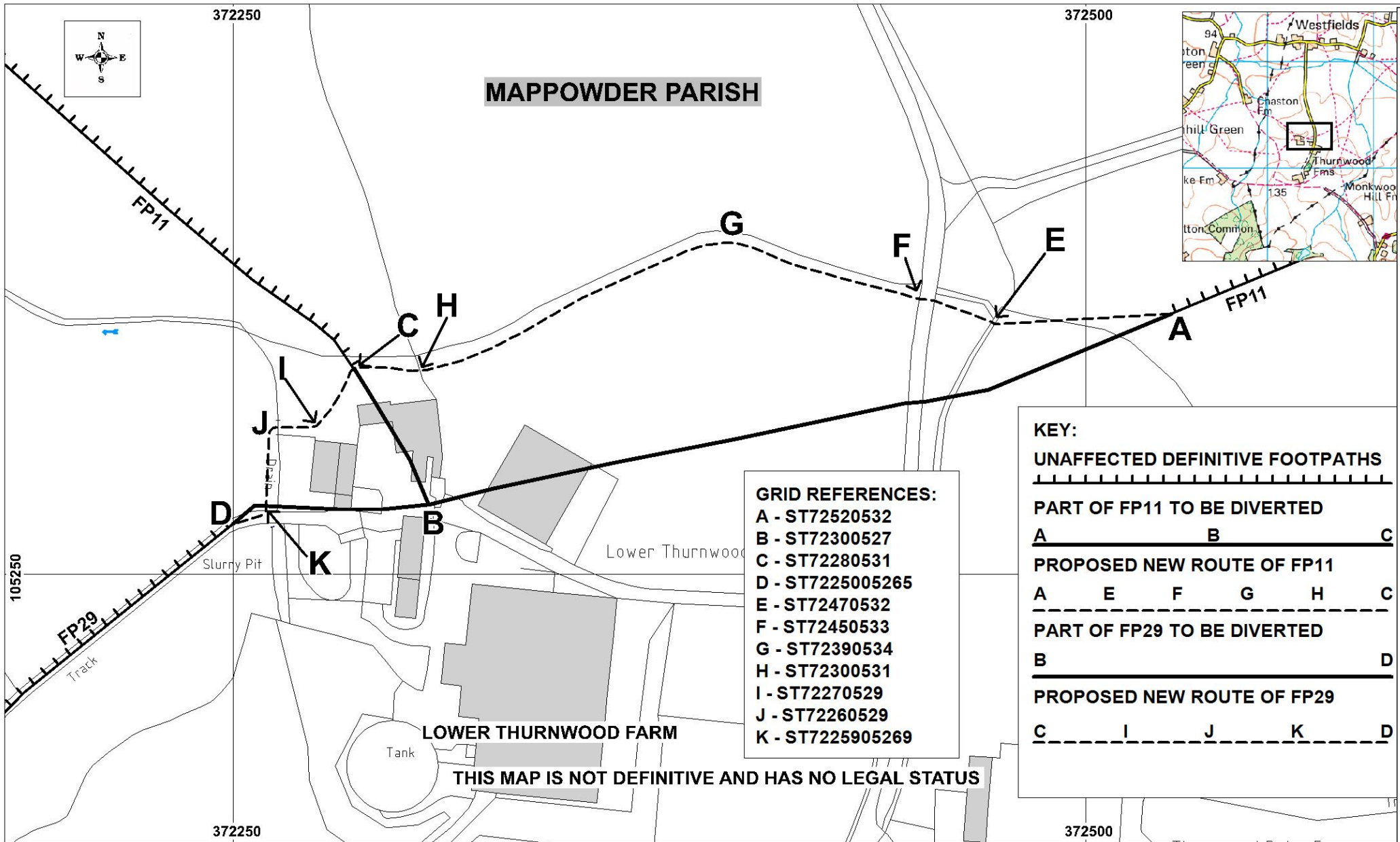
- 4.1 The County Council has carried out a wide consultation and no objections have been received.
- 4.2 The County Councillor for Blackmore Vale, Cllr Pauline Batstone, was consulted on the proposals and made no comment.

4.3 Consultation responses are summarised in Appendix 2.

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 parts of Footpaths 11 and 29, Mappowder 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.

Andrew Martin
Service Director Highways




<p>APPLICATION FOR A PUBLIC PATH ORDER SECTION 119, HIGHWAYS ACT 1980 PROPOSED DIVERSION OF FOOTPATHS 11 AND 29, MAPPOWDER</p>	<p>Ref: 16/04 Date: 09/07/2015 Scale 1:1500 Drawn By: CAM Cent X: 372395 Cent Y: 105294</p>	<p>GEOGRAPHICAL INFORMATION SYSTEMS  Dorset County Council <small>© Crown copyright and database rights 2016 Ordnance Survey 100 You are permitted to use this data solely to enable you to respond to enquiries, interact with, the organisation that provided you with the data. You are 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 & 2014</small></p> <p>APPENDIX 1</p>
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Table summarising consultation responses

Name	Comments
Scottish and Southern Energy	Plans indicate the presence of plant and cables in the area. Access to this equipment will be provided for in the Order.
Claire Pinder Senior Archaeologist, Dorset County Council	There are at present no recorded archaeological finds or features or historic buildings on or in the vicinity of the routes affected by this proposal.
The Ramblers	During the pre-application consultation, made several comments regarding furniture on the route. Pleased to see that the improvements in furniture have already been put in place. However, notes that between points F and G, there is a noticeable patch of damp, boggy rutted ground, which walkers would need to avoid and From H-C-I the area is overgrown and boggy. Otherwise welcomes the clarification of the route around the farm. Works will be carried out to improve drainage / surface of the new routes. The Order will be confirmed only on completion of these improvements.
Environment Agency	No objection to the proposed Order.
Mappowder Parish Council	No objection as long as the diversions are well signed.
Wessex Water	There is a water main crossing part of the proposed path diversion. Wessex Water requires a minimum three metre easement width on either side of its apparatus for the purpose of maintenance or repair.
Southern Gas Networks	There are no gas mains in the area of enquiry.