



Strategic and Technical Planning Committee

Date: Tuesday, 2 May 2023
Time: 10.00 am
Venue: Council Chamber, County Hall, Dorchester, DT1 1XJ

Members (Quorum)

Robin Cook (Chairman), John Worth (Vice-Chairman), Shane Bartlett, Dave Bolwell, Alex Brenton, Kelvin Clayton, Jean Dunseith, Mike Dyer, Sherry Jespersen, Mary Penfold, Belinda Ridout and David Tooke

Chief Executive: Matt Prosser, County Hall, Dorchester, Dorset DT1 1XJ

For more information about this agenda please contact Democratic Services
Meeting Contact 01305 224202 - elaine.tibble@dorsetcouncil.gov.uk

Members of the public are welcome to attend this meeting, apart from any items listed in the exempt part of this agenda.

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Agenda

Item	Pages
1. APOLOGIES	
To receive any apologies for absence.	
2. MINUTES	3 - 18
To confirm the minutes of the meeting held on 24 March 2023.	
3. DECLARATIONS OF INTEREST	
To disclose any pecuniary, other registrable or non-registrable interests as set out in the adopted Code of Conduct. In making their disclosure councillors are asked to state the agenda item, the nature of the interest and any action they propose to take as part of their declaration.	

If required, further advice should be sought from the Monitoring Officer in advance of the meeting.

4. REGISTRATION FOR PUBLIC SPEAKING AND STATEMENTS

Members of the public wishing to speak to the Committee on a planning application should notify the Democratic Services Officer listed on the front of this agenda. This must be done no later than two clear working days before the meeting. Please refer to the Guide to Public Speaking at Planning Committee.

[GuidanceforspeakingatPlanningCommittee.doc.pdf](https://www.dorsetcouncil.gov.uk/media/1000000/GuidanceforspeakingatPlanningCommittee.doc.pdf)
([dorsetcouncil.gov.uk](https://www.dorsetcouncil.gov.uk)).

The deadline for notifying a request to speak is 8.30am on Thursday 27 April 2023.

5. APPLICATION TO DIVERT FOOTPATH 22, WIMBORNE MINSTER 19 - 28

This report considers an application to divert part of Footpath 22, Wimborne Minster under the Town and Country Planning Act 1990 (TCPA) as it is affected by development. Part of the affected land is registered to Dorset Council. The proposal is unopposed, and the legal tests are regarded to be fulfilled, therefore the application should be accepted and a diversion order made.

6. URGENT ITEMS

To consider any items of business which the Chairman has had prior notification and considers to be urgent pursuant to section 100B (4) b) of the Local Government Act 1972. The reason for the urgency shall be recorded in the minutes.

7. EXEMPT BUSINESS

To move the exclusion of the press and the public for the following item in view of the likely disclosure of exempt information within the meaning of paragraph 3 of schedule 12 A to the Local Government Act 1972 (as amended).

The public and the press will be asked to leave the meeting whilst the item of business is considered.



STRATEGIC AND TECHNICAL PLANNING COMMITTEE

MINUTES OF MEETING HELD ON FRIDAY 24 MARCH 2023

Present: Cllrs Robin Cook (Chairman), John Worth (Vice-Chairman), Shane Bartlett (Arrived at 9.30, therefore did not take part in the discussion or decision making), Dave Bolwell, Alex Brenton, Kelvin Clayton, Jean Dunseith, Sherry Jespersen, Mary Penfold and Belinda Ridout

Apologies: Cllrs Mike Dyer and David Tooke

Also present: Cllr David Walsh and Cllr David Gray

Also present remotely: Cllr Cherry Brooks

Officers present (for all or part of the meeting):

Philip Crowther (Legal Business Partner - Regulatory), Mike Garrity (Head of Planning), Hilary Jordan (Service Manager for Spatial Planning), Elaine Tibble (Senior Democratic Services Officer), Felicity Hart (Minerals and Waste Planning Manager), Steve Savage (Transport Development Manager), Naomi Archer (Senior Conservation and Design Officer) and Martin Peacock (Senior Landscape Architect)

Officers present remotely (for all or part of the meeting):

70. Minutes

The minutes of the meeting held on 21 November 2022 were confirmed and signed.

71. Declarations of Interest

No declarations of disclosable pecuniary interests were made at the meeting.

72. Application No: WP/20/00692/DCC - Portland Port, Castletown, Portland, DT5 1PP

This application had been subject to a site visit by the committee members prior to the date of the committee meeting.

The Head of Planning introduced the application for the Construction of an energy recovery facility with ancillary buildings and works including administrative facilities, gatehouse and weighbridge, parking and circulation areas, cable routes to ship berths and existing off-site electrical sub-station, with site access through Portland Port from Castletown.

A presentation in respect of the policy context and strategic overview was presented by the Service Manager for Spatial Planning, highlighting considerations from various policies and the National Planning Policy Framework (NPPF) relevant to the application. A recent appeal decision in Wiltshire and the reasons the inspector allowed the appeal was also presented to the Committee together with an update of Habitats Regulations and the need for an Environment Agency Appropriate Assessment should members decide to approve the application.

Following the above introductions, the Minerals and Waste Planning Manager presented the report to the committee. This included the details of the proposal, buildings and the proposed energy generation. Members were shown details of the proposed site layout, proposed images, elevations and treatment in terms of a mesh printed with scenic images on the outside of the building. Vehicle movements were estimated at 40 each way maximum, assuming no ship movements and their proposed travel routes were explained.

The Key Planning Issues and policies were detailed as part of the Minerals and Waste Planning Managers presentation, all of which were detailed within the Officer's report. These included the effect of the proposal on heritage and landscape.

The report and conclusion was summarised by the Head of Planning, these included the benefits of the proposal to the port and local area.

On balance it was considered that the benefits did not outweigh the harm.

However, if members were to approve the application a framework had been drawn up with the applicants for the conditions and heads of terms which would need to be finalised with a S106 agreement.

Comfort Break 10.25 to 10.45

Oral representation in objection to the application was received from the following members of Stop Portland Waste Incinerator Campaign: Paul Cottrell, Tony Dobbs, Paula Klaentschi, Diane Fowler, Barry Walsh, Cllr Jon Orrell and Eleanor Fitzgeorge-Parker.

The objections voiced related to the location of the proposal, the energy issues and alternatives, design comparison with industry norms, the socio-economic impact, local wind and weather and the consequential impact on residents, the climate and ecological emergency, health and wellbeing impacts for local people and the value of the location balanced against the harm to the AONB, Jurassic Coast and wildlife.

Oral representation in objection to the application was received from the following members of The Portland Association: Debbie Tulett, Helena Berry, Jonathan Tweedle, Steve Christmas, Laura Baldwin, Hilary Breakwell and Catherine Bennett. Their concerns focused on lack of need for the application, heritage assets, landscape, natural heritage, biodiversity, onshore power, waste management and traffic congestion.

11:54 In accordance with procedural rule 8.1 a vote was taken, the committee agreed to exceed the 3 hour meeting time limit.

Additional representation in objection to the application was received from: Michael Kelly (Weymouth & Portland Access Group), Gerry Hinde, Chris Moyle (Weymouth and Portland Civic Society), Rev'd Alasdair Kay (The Anglican Greyfriars) and Raina Summerson (B-Side Arts Organisation). They addressed the following matters: the location of the proposal and resulting pollution, biodiversity, health and wellbeing concerns, impact on the environment, road infrastructure, additional traffic, risk to school children, tourism, arts, heritage, Portland's economy and unique image.

Lunch Break 12.25 – 13.00

Oral representation in support of the applicant was received from: Bill Reeves (Portland Port Group), Stephen Othen (Fichtner Consulting Engineers Ltd), Jane Davies (Terence O'Rourke Ltd), John Trehy (Terence O'Rourke Ltd), Tim Hancock (Terence O'Rourke Ltd), David Elvin KC (Landmark Chambers). The speakers in support of the application raised port related matters and the help this application would offer the cruise industry and in turn the local area and economy. Supporters responded to issues relating to technical matters relevant to air quality, public health, landscape and visual assessment, cultural heritage, compliance with planning and policy matters relating to the reasons for refusal, the planning balance, legal, planning and process matters in response to the Officer's report.

Oral representation was received from the following Town and Dorset Council Councillors:

Cllr Jim Draper (On behalf of Portland Town Council)
Cllr Kate Wheller (On behalf of Weymouth Town Council)
Cllr Avril Harris (On behalf of Swanage Town Council)

Cllr Paul Kimber (Dorset Council)
Cllr Clare Sutton (Dorset Council)
Cllr Brian Heatley (Dorset Council)
Cllr Rob Hughes (Dorset Council)
Cllr Nick Ireland (Dorset Council)

All representations from Councillors, on behalf of their constituents, were in objection to the application with their concerns being similar to those raised by the objectors earlier in the meeting.

Comfort Break 14.54 – 15.15

The Head of Planning referred to the points raised by the speakers, both objectors and supporters. He picked up and addressed the salient points that he felt needed to be responded to and clarified.

The Service Manager for Spatial Planning clarified some points relating to the world heritage site and the two types of setting, the functional setting and the experiential setting.

The Lawyer (Dorset Council) reiterated that should the committee be minded to approve the application, it would be subject to consideration of possible conditions S106 obligations and Environment Agency Appropriate Assessment. The report stated where harm could be mitigated with conditions which was consistent with other authorities. If the application was approved, it would need to be subject to a resolution that officers report back to committee with those matters for a final approval.

Members were given the opportunity to ask questions of the Planning Officers and debate the application.

The committee made reference to the limited knowledge of Incinerator Bottom Ash, its disposal and the required water supply needed to operate the facility. However, Members' main concerns-related to the historical heritage, the location of the flue stack and the effects on those residential properties that were located on the hill above. The cumulative effect of 80 additional daily HGV movements, including construction traffic on the narrow streets of Portland, the dangers of spillages, airborne particles, sulphur dioxide and smog and their effects on residents and local biodiversity.

Although accepted that the port was an industrial area and the provision of shore power would be a bonus for the area it was not considered a suitable location for this facility. The proposed building and stack was big and bulky, would have a detrimental impact on the landscape, alter the skyline, and cause irrevocable harms for a considerable length of time

On balance the committee were not convinced that the benefits would outweigh the harm that the development would cause to the heritage assets and the physical and emotional health and wellbeing of residents. The Jurassic Coast was on the UNESCO map as a unique coastline, the proposal would upset the whole setting. "An unwanted dinosaur on the Jurassic coastline.

Proposed by Cllr Jespersen, seconded by Cllr Clayton.

Decision: that the application be refused due to the reasons outlined in the appendix to these minutes.

73. Urgent items

There were no urgent items.

74. Exempt Business

There was no exempt business.

**Update Sheet
Appendix - Decision List**

Duration of meeting: 9.10 am - 4.41 pm

Chairman

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Strategic and Technical Planning Committee – 24/03/2023

Update Sheet

Application Ref: WP/20/00692/DCC – Portland Port, Castletown

Proposal: Construction of an energy recovery facility with ancillary buildings and works including administrative facilities, gatehouse and weighbridge, parking and circulation areas, cable routes to ship berths and existing off-site electrical sub-station, with site access through Portland Port from Castletown.

1. Letter received from applicant's agent on 20th March (addressed to the Council's solicitor): this letter asked for a deferral of the application until the May meeting on the following grounds (summarised):

- The process of how the application has been dealt with is unsatisfactory and the report is flawed;
- The power of the committee in reaching a decision has been materially circumscribed by the report as there is no opportunity for the committee to resolve to approve the application, should it be minded to do so, that would be lawful, and so the only definitive decision that could lawfully be taken is a refusal. The two main areas of concern relate to the omission of any conditions or s106 heads of terms which are material considerations in mitigating the effects of the development, while the appropriate assessment cannot be concluded as the AA is conducting an AA on that part of the scheme expressly for permitting purposes.
- It would be beneficial for members to see the draft report of the previous case officer who had worked extensively upon the planning application;
- The report contains significant omissions, misrepresentations, inaccuracies and errors and, whilst it is very clear on the weight that the officer team should be given to the identified negative effects, it does not provide any detail at all on the weight that is allocated to the (incomplete) list of scheme benefits.

Response:

The Council's solicitor responded to the applicant's agent (letter dated 21st March) to confirm that, in the Council's opinion, there is no legal impediment to the report being considered by committee on 24th March. The reply stated that:

- It is perfectly usual not to include draft conditions or draft s106 heads of terms in an officer report where the recommendation is for refusal. If the committee is minded to approve, officers can advise on the way forward in relation to agreeing the conditions/heads of terms;
- the report is clear on the benefits of the scheme and the weight to be attributed to them, including where those can be properly secured by section 106 obligation;
- it is not appropriate to publish the draft report of the previous (consultant) case officer, not least because it was incomplete;
- on the matter of appropriate assessment, if the Committee were minded to grant permission, any resolution would be subject to consideration of the EA's AA by the Council. If the EA's AA concludes that the scheme would not adversely affect the integrity of a European site providing appropriate mitigation is in place, then any resolution to grant would be subject to securing that mitigation. It may be that any necessary conditions and/or s106 obligations need to be considered by members at a subsequent Committee meeting

before planning permission is issued. Therefore, the solicitor does not agree that a resolution to grant consent could be considered to be a consent or other authorisation under the Habitat Regulations.

Further officer response to letter dated 20th March 2023:

Officers consider that, in the light of the concerns expressed that the officer's report is incomplete in listing the benefits of the scheme and in attributing appropriate weight, it would be helpful to members of the committee to summarise the position for any avoidance of doubt. Table 1 below lists the benefits, as summarised by the applicant in a submission to the Council dated February 2023 (and on the public file), with officer comments and a view on the weight that is given to these matters.

Table 1:

Benefits of Portland ERF as stated by applicant	Officer Comment	Officer view on weight to be given
1. The Portland ERF will provide the only potential near-term (pre-2036) viable source of electricity to enable Portland Port to provide shore power to visiting cruise ships, to guarantee and ensure the continued growth of the cruise business that generated £8m for the Dorset economy in 2022. The benefit of shore power also extends to stationed Royal Fleet Auxiliary vessels and any other equipped commercial vessels, leading to substantial environmental and economic benefits for the Ministry of Defence and other marine businesses. The ERF shore power will protect the future of the port and help to create the conditions in which Portland Port can expand and adapt by removing a major barrier to investment (lack of suitable and secure power supply). Without shore power the Port risks losing the cruise business it has worked hard to attract to competitor ports who can provide it. According to the British Ports Association this would be the first shore power facility provided without public subsidy in Europe iii, deliverable as it is a positive co-benefit of a high-quality waste solution for Dorset. In line with NPPF 81 given the support provided by this application for economic growth this benefit should be afforded very substantial positive weight .	Accepted that shore power is a significant benefit and the applicant has provided evidence that this is both capable of delivery and take-up. It is also accepted that there will be benefits for the local economy from visiting cruise ships.	Full positive weight to the delivery of shore power in the planning balance is appropriate

Benefits of Portland ERF as stated by applicant	Officer Comment	Officer view on weight to be given
<p>2. Use of residual waste as fuel to generate energy and assist in the diversion of waste from landfill to deliver more sustainable waste management at a higher level in the waste hierarchy is a further significant benefit and is fully in accordance with national policy. This benefit should be afforded significant positive weight.</p>	<p>Energy recovery from the incineration of waste would assist in moving waste up the waste hierarchy and is preferable to disposal by landfill. This is complemented by the fact that the proposal would have the potential to deliver combined heat and power (CHP).</p>	<p>This makes the proposal compliant with the energy recovery aspirations of the local plan and can be given full positive weight in this regard.</p>
<p>3. The Portland ERF provides new waste management capacity that will contribute to Dorset meeting its identified residual waste management need in line with the principles of self-sufficiency and the proximity principle (enshrined within the Dorset Waste Plan) and reduce the existing reliance upon the export of residual waste to waste management facilities outside of Dorset, without prejudicing other Dorset Waste Plan sites from coming forward. This benefit should be afforded significant positive weight.</p>	<p>It is accepted that the proposal will provide additional capacity for residual waste treatment and that there is no evidence to suggest it will prejudice other sites in coming forward. However, it has not been demonstrated that the site would have advantages, when taken as a whole, over the allocated sites in the plan which are potentially capable of meeting Dorset's needs and are considered by officers to score better in relation to co-location and the proximity principle. Therefore, it is deemed to be less favourable in meeting Dorset's needs</p>	<p>Limited weight is given to the contribution this site could make in terms of providing competition for waste management (helping to drive down prices), but officers also consider that the allocated sites are more advantageous overall in supporting self-sufficiency and the proximity principle. Therefore, officers do not agree with the applicant's view on the weight that could be given to the provision of additional waste management capacity as, in spite of the additional capacity, it also does not comply with the Waste Plan for reasons set out in the report.</p>
<p>4. Reduction in the cost of managing Dorset's residual waste, as a result of reduced costs associated with transporting waste to other facilities outside of Dorset, and the avoidance of landfill related</p>	<p>Whilst it might assist with reducing costs, there is no certainty that the proposal could secure contracts for managing Dorset's waste and officers are confident that the allocated sites provide sufficient capacity in locations</p>	<p>Whilst additional competition for managing Dorset's residual waste may lead to reduced costs, this</p>

Benefits of Portland ERF as stated by applicant	Officer Comment	Officer view on weight to be given
charges. This benefit should be afforded moderate positive weight.	that are better placed to handle Dorset's waste without recourse to landfill.	considered to have only very limited positive weight in the planning balance due to uncertainty over its ability to secure contracts given the preferable locational benefits of the allocated sites.
5. The site's location within a commercial port provides potential opportunities for residual materials arising from the process to be transported sustainably by sea to appropriate existing recycling plants (for the production of recycled aggregate building products), reducing local traffic impacts, an advantage that no other allocated site in Dorset could achieve. This should be afforded moderate positive weight.	It is accepted that the port location would facilitate transportation of IBA by sea. Whilst there is no certainty that this will come forward (and so IBA may end up being transported by road), there is a testimony from a prospective customer that indicates the port route is realistic and achievable.	Agreed that moderate positive weight should be attributed to the port's location for handling IBA.
6. Provision of a new significant source of non-intermittent, dependable baseload energy generation that increases energy security for Dorset and provides energy generation on Portland that will facilitate the growth of local business and industry. This benefit should be afforded moderate positive weight.	It is accepted that National Grid constraints limit the opportunity to increase power supply to Portland and that Powerfuel would be capable of delivering additional generation capacity and resilience	Agreed that moderate positive weight should be attributed to energy provision that will improve energy resilience and local capacity.
7. Reduction in climate change impacts associated with the management of Dorset's waste as a result of lower landfill volumes (direct and/or indirect) and lower transport carbon costs. This benefit should be afforded moderate positive weight.	Landfill reduction has been considered as part of the waste plan's strategy for managing residual waste, with the allocation of four strategic sites in locations that are better positioned to support the proximity principle in relation to Dorset's waste. The reduction of transportation costs is therefore not proven as this would depend upon competing for future contracts and importation of RDF via the port could potentially be transported from beyond Dorset.	This issue is only given neutral weight in the planning balance.

Benefits of Portland ERF as stated by applicant	Officer Comment	Officer view on weight to be given
<p>8. The Portland ERF, applying conservative shore power usage assumptions, will result in an improvement in air quality across the majority of the local area as a result of the shore power provision (due to the removal of existing unabated diesel emissions from vessels in port) 1. This benefit should be afforded moderate positive weight.</p>	<p>It is accepted that reduction in diesel emissions from vessels is a positive benefit, although this should be set against emissions from the waste plant together with localised impacts from HGVs delivering feedstock.</p>	<p>Agreed that reducing ship-based emissions should be afforded moderate positive weight, but this cannot be considered in isolation from the power plant's own emissions or those of HGV movements, which will offset some of the positive benefits.</p>
<p>9. Provision of a heritage mitigation programme that will ensure managed public access to currently inaccessible heritage assets and funding to restore these assets, which will result in the removal of a Scheduled Monument from Historic England's "at risk" register. This mitigation outweighs the "<i>less than substantial harm</i>" to the nearby asset settings creating a net heritage benefit that should be afforded moderate positive weight.</p>	<p>The Heritage Mitigation Strategy includes vegetation clearance and repairs to East Weare Battery E which would remove it from the 'At Risk' Register and would facilitate controlled public access as well as the provision of interpretation boards at accessible viewing points. These are heritage benefits, but they do not address the substantive effects of the development of the ERF and stack on adjacent heritage assets, nor do they offset the less than substantial harm (which, in the view of officers, would be considerable and at the upper end of 'less than substantial') to a large group of nationally significant heritage assets.</p>	<p>Officers consider that the heritage mitigation offered can only be given slight weight in that it does not address the substantive heritage impacts of the proposal.</p>
<p>10. Provision of a permissive path that will provide public access through currently inaccessible parts of the Portland Port estate that will complete the "round the island" footpath. This will benefit local leisure activities and can enhance the experience of users of this part of the South West Coast Path and the England Coast Path. This benefit should be afforded moderate positive weight.</p>	<p>Officers considered that, whilst the permissive path would be a positive benefit if it could be achieved in an acceptable form (bearing in mind some concerns from Historic England and Natural England about the impact of the security fence), it was not possible to conclude that the proposal had sufficient certainty or associated heritage mitigation benefits to be given more than slight weight. The applicant has since confirmed that the permissive path will not form part of the mitigation strategy.</p>	<p>This is no longer relevant to the scheme as the applicant has since confirmed that the permissive path will not form part of the heritage mitigation strategy.</p>

Benefits of Portland ERF as stated by applicant	Officer Comment	Officer view on weight to be given
11. Socioeconomic benefits including a £150m private sector investment that will provide 300 construction jobs, 35 full time permanent jobs and 60 indirect jobs in a key employment zone. This benefit should be afforded moderate positive weight .	It is accepted that socio-economic benefits would arise from the scheme.	Agreed that this should be afforded moderate positive weight
12. The Portland ERF provides an identified and credible opportunity to provide district heating to two local prison facilities that will result in further improvements in air quality, reductions in carbon emissions and cost savings for the Ministry of Justice. The form of legal heads of terms of agreement with the Ministry of Justice has been agreed, a viable commercial case has been presented and the route from the Portland ERF to the offtakers has been analysed to demonstrate there is limited/no planning risk associated with this proposal. The benefits of supplying the prisons (effectively UK Government credit risk) provides investor confidence to fund the upfront cost of the district heating network. This will then create an opportunity to extend this cornerstone heat network to other parts of Portland where heat produced by the ERF (that otherwise will not be used) could be priced to target fuel poverty alleviation. Given the analysis provided this benefit must reasonably be seen as being deliverable and should be afforded moderate positive weight	It is considered that the applicant has taken all reasonable steps to ensure the proposal will be CHP-ready (combined heat and power, whereby it is able to generate heat from the production of electricity, which is then fed into district heating systems). The applicant has provided supporting information which confirms that there is a reasonable prospect of this being taken up by the Ministry of Justice at the Verne, and all steps necessary within the site to facilitate this will be taken. Whilst there may be a need for subsequent planning permissions to facilitate links outside of the application site, it is agreed that the applicant has gone to considerable lengths to ensure the proposal can deliver district heating. Future uptake by the Portland community is less certain at this stage, but the fact that the potential exists can be considered to be a positive benefit for Portland.	Agreed that this should be afforded moderate positive weight

2. Officer Update on the 'fallback' position

Section 6 of the officer's report summarises the relevant planning history. Paragraph 6.7 confirms that planning permission was granted for the construction of an energy plant adjoining Balaclava Bay in January 2010. A subsequent variation of condition application was approved in April 2013 (see para. 6.11 of the report) to allow for the use of rubber crumb (recycled rubber from tyres) in addition to vegetable oil in its power oil production and power generation plant. Permission was subsequently granted for a certificate of lawful use or development (19th October 2019) for the demolition of buildings on the site, with the decision notice confirming that, in accordance with s.56 of the Town and Country Planning Act 1990 and the evidence submitted, planning permission 09/00646/FULE is considered to have been lawfully implemented.

In order for a fallback to be considered in the planning balance, it must be able to lawfully proceed and there must be a likelihood or real prospect of the fallback development proceeding. As the energy plant has been lawfully implemented, it can lawfully proceed. The permission was implemented in 2013, by the demolition of a building, and no further work has since taken place. As a result, officers have real doubts over whether it is likely or that there is a real prospect that the energy plant development would proceed.

Notwithstanding this, the fallback position was significantly smaller in height and massing (including its stack height) and, in response to a previously refused scheme, included a package of heritage mitigation measures, significantly in excess of what is proposed with this application, to address identified impacts upon heritage assets.

Therefore, and for the avoidance of doubt, officers can confirm that the previously approved energy plan has been implemented and would be lawfully capable of coming forward, and thus has been taken into account as a fallback position.

In considering this, officers are of the view that the Powerfuel proposal has greater impacts upon landscaping and heritage in that:

- the previous implemented consent was considered by the landscape officer to have only a low or very low impact upon landscape and that the nature of significance of visual impact would generally be minor or neutral, bearing in mind that storage tanks on the site were a maximum of 10 metres in height and the stack would be under 35 metres in height;
- the previous implemented scheme had incorporated a number of changes from an earlier refusal to mitigate harm to heritage assets, including a revised layout to improve the setting of the breakwater and commemorative stone and relocation of storage tanks some considerable distance away from the Dockyard office, with improved boundary treatments.

On the other hand, the Powerfuel proposal demonstrates it would be capable of delivering shore power and is CHP-ready. It would also provide capacity to manage residual waste (in the form of refuse-derived fuel), which assists in moving waste up the waste hierarchy. Having said this, it is not unreasonable to assume that, if the implemented energy plant were to come forward, the opportunity would exist to provide shore power (given that it is within the port estate) and to explore the possibility of district heating. It is also the case that the implemented scheme was deemed to perform better than fossil fuels when considered at the planning application stage, by making use of vegetable oil and rubber crumb which is recycled from tyres.

Therefore, whilst the Powerfuel development offers some known benefits over the implemented scheme, officers consider that it has far greater impacts upon heritage and landscape, as detailed in the proposed reasons for refusal. As a result, even if the energy plant represents a fallback which is doubtful, officers do not consider that this application has sufficient benefits over the energy plant to justify granting planning permission.

3. Portland Community Partnership: would like the committee to understand that their original comment (as in the report) was put as an objection, but they are clarifying that this was neutral (a comment) but they are now adding that they are particularly concerned about levels of Co2 that would be emitted from the facility.

4. The Portland Association: have written to clarify to the committee that TPA is not a single issue objector group (like SPWI) but is a constituted community group, formed to become involved with various issues on the island in respect of environment, ecology and heritage with the aims of

preserving and enhancing the best of Portland's character and fostering good Planning and Conservation to safeguard the unique environment. They will continue exist and work on other objectives after this application is resolved.

5. Update on numbers:

- Objections: 3,419 (up 3 -SPWI and 2 others)
- Supporters : 35 (down 1) and
- Neutral comments 39

Strategic and Technical Planning Committee 24 March 2023 Decision List

Application Reference: WP/20/00692/DCC

Application Site Portland Port, Castletown, Portland, DT5 1PP

Proposal: Construction of an energy recovery facility with ancillary buildings and works including administrative facilities, gatehouse and weighbridge, parking and circulation areas, cable routes to ship berths and existing off-site electrical sub-station, with site access through Portland Port from Castletown.

Recommendation: Refuse

Decision: Refused due to the reasons outlined below:

The proposed development, being located on a site that is not allocated in the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019, fails to demonstrate that it would provide sufficient advantages as a waste management facility over the allocated sites in the Plan. This is by reason of its distance from the main sources of Dorset's residual waste generation and the site's limited opportunity to offer co-location with other waste management or transfer facilities which, when considered alongside other adverse impacts of the proposal in relation to heritage and landscape, mean that it would be an unsustainable form of waste management. As a consequence, the proposed development would be contrary to Policies 1 and 4 of the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019 and paragraph 158 of the NPPF.

2.2 The proposed development, as a result of its scale, massing and height, in the proposed location, would have a significant adverse effect on the quality of the landscape and views of the iconic landform shape of the Isle of Portland within the setting of the Dorset and East Devon Coast World Heritage Site, particularly when viewed from the South West Coast Path and across Portland Harbour. As such, the proposal is contrary to Policy 14 of the Waste Plan, Policy ENV1 of the West Dorset, Weymouth & Portland Local Plan, Policies Port/EN7 and Port/BE2 of the Portland Neighbourhood Plan, and paragraph 174 of the NPPF.

2.3 The proposed development would cause 'less than substantial' harm to a range of heritage assets. Public benefits of the scheme have been assessed, taking account of the mitigation proposed, but are not considered sufficient to outweigh the cumulative harm that would occur to the individual heritage assets and group of heritage assets, with associative value in the vicinity. As a result, the proposal is contrary to Policy 19 of the Waste Plan, Policy ENV4 of the West Dorset, Weymouth & Portland Local Plan, Policy Port/EN4 of the Portland Neighbourhood Plan and Paragraph 197 and Paragraph 202 of the NPPF.

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Strategic and Technical Planning Committee 2 May 2023

Application to divert Footpath 22, Wimborne Minster

For Decision

Portfolio Holder: Cllr D Walsh, Planning

Local Councillor(s): Cllr J Dover, Cllr M Roe

Executive Director: J Sellgren, Executive Director of Place

Report Author: Carol McKay

Title: Senior Definitive Map Technical Officer

Tel: 01305 225136

Email: carol.mckay@dorsetcouncil.gov.uk

Report Status: Public

Brief Summary:

This report considers an application to divert part of Footpath 22, Wimborne Minster under the Town and Country Planning Act 1990 (TCPA) as it is affected by development. Part of the affected land is registered to Dorset Council. The proposal is unopposed, and the legal tests are regarded to be fulfilled, therefore the application should be accepted and a diversion order made.

Recommendation:

That:

- (a) The application to divert part of Footpath 22, Wimborne Minster be accepted and an order made;
- (b) The Order include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion; and
- (c) If the Order is unopposed, and is considered to meet the legal tests it be confirmed by the Council.
- (d) If the Order is opposed, but the objections are not relevant to the legal tests, it be submitted to the Secretary of State for confirmation without further reference to Committee.

Reason for Recommendation:

- (a) The proposed diversion meets the legal criteria set out in the TCPA.
- (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.
- (c) Accordingly, for the reasons set out below in the report the proposed diversion is considered expedient and therefore Dorset Council can itself confirm the order.
- (d) Dorset Council is unable to confirm opposed orders itself but can submit them to the Secretary of State for confirmation, subject to the legal tests being fulfilled.

Report**1 Background**

- 1.1. Dorset Council has received an application from Barratt David Wilson Homes to divert part of Footpath 22, Wimborne Minster at Quarter Jack park, as shown on Drawing P244/23/2 attached as Appendix 1.
- 1.2. Planning permission was granted in 2020 (3/18/3305/FUL) to allow the erection of 174 dwellings, and the erection of a community sports facility comprising club house, playing pitches, parking and landscaping together with the change of use of the land to leisure. The current definitive route of Footpath 22, Wimborne Minster is affected by this development.
- 1.3. The current definitive route of Footpath 22, Wimborne Minster runs from point A to the east of Ainsley Road, generally south east towards the A31 and then generally east north east along the northern edge of the A31 to point H.
- 1.4. The proposed new route runs from point A to the east of Ainsley Road south south west and south to point C to the northeast of the skatepark, entering the public open space and continuing generally south east to point D then generally east, and south south east through the public open space to point E and then generally north east running parallel to the A31 to point F and generally north and north east to point G and generally south south east to the unaffected part of Footpath 22 at point B. From point F, a short section of footpath runs south east to join the existing route of Footpath 22 at point H.
- 1.5. The new footpath between F and H maintains access to the existing steps between H and B whilst a more accessible alternative is available via the new footpath between points F – G – B.

- 1.6. The landowners are Barratt David Wilson Homes and Dorset Council. The land owned by Dorset Council, which is just outside the development area, is indicated on the plan attached as Appendix 1. This land, which includes a SANG, skate park, allotments and public open space was transferred to Dorset Council in December 2020.
- 1.7. 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 Strategic and Technical Planning Committee, in the interests of transparency.

2 Law

Town and Country Planning Act 1990

- 2.1 Dorset Council has powers to make public path diversion orders under Section 257 of the TCPA.
- 2.2 Section 257 of the TCPA makes provision for a competent authority to authorise the diversion of any footpath, bridleway or restricted byway through the making of an order if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with a planning permission. The term “competent authority” is defined within Section 257 as being the local planning authority who granted the planning permission, in this instance Dorset Council.
- 2.3 The power contained in section 257 is available only if the development, insofar as it affects the path or way, is not yet substantially complete.
- 2.4 The power of confirmation is discretionary and non-confirmation may be justified in certain circumstances.
- 2.5 Dorset 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 a diversion or extinguishment order to be included in the diversion / 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.

3 Compliance with the law

Planning Permission

- 3.1 There is a valid planning permission 3/18/3305/FUL as detailed in paragraph 1.2 above.

Diversions necessary in order for development to take place

- 3.2 The proposed public path diversion is necessary in order for development to take place.
- 3.3 The current definitive route of Footpath 22, Wimborne Minster is affected by this development as shown on the plan attached as Appendix 2.

Viable alternatives

- 3.4 There are additional permissive paths which were considered for the proposed new route, but the route that was agreed is closer in alignment to the original footpath and avoids the need to remove existing kissing gates that were installed on the permissive paths. Furniture cannot be included on routes diverted under the TCPA.

Planning permission substantially completed

- 3.5 At present the permitted development is ongoing and is expected to finish in January 2027. The Order will be made, and if unopposed, confirmed before the anticipated completion date.

Disadvantages of the Order versus benefits

- 3.6 The diversion order will have the effect of increasing the overall length of the footpath as discussed below in paragraphs 5.2 – 5.3. The new route will also connect with new adopted footways and permissive paths at several points along the new footpath, which is indicated on the plan attached at Appendix 2.
- 3.7 Part of the current route is a narrow path running immediately beside the A31 and below the ground level of the road. The width of the new footpath will be 2.5 metres and will be raised in line with the rest of the site and surfaced to an agreed specification along its length with a compacted stone finish. Officers consider that the new route, which is wider, further from the A31 and at a higher ground level, will be more pleasant for walkers.
- 3.8 The proposed diversion will create a path between points F and G that maintains a connection with the existing footpath via steps between H and B, whilst an accessible route along a gradual slope is also created between points F – G – B.
- 3.9 The proposed new footpath between points D and E runs through a new green space and connects with additional permissive paths as shown on the plan attached as Appendix 1.
- 3.10 Overall the proposed diversion offers advantages to the public which officers believe outweigh any disadvantages.

4 Consultation

- 4.1 The Council carried out a wide consultation in February and March 2023 and no objections were received.
- 4.2 Cllr Dover and Cllr Roe, Dorset Council members for Colehill and Wimborne Minster East were consulted on the application and made no comments.
- 4.3 The Ramblers responded with no objection but a query regarding potential use of the new footpath by cyclists. Under the legislation, furniture cannot be included on routes diverted under the TCPA, therefore gates or other barriers cannot be included as part of the diversion. However future unauthorised use of the new footpath by cyclists reported to the Council will be investigated and appropriate action taken, such as installation of signage and furniture.
- 4.4 All consultation responses are summarised in Appendix 3.

5 Discussion

- 5.1 The proposed diversion meets the legal tests under the TCPA.

- 5.2 The current route of Footpath 22 between points A – H is approximately 447 metres long.
- 5.3 The combined length of the proposed new route of Footpath 22 between A – C – D – E – F – G – B and points F and H is approximately 636 metres long. This adds approximately 189 metres to the overall length of Footpath 22. The new footpath will connect to the new development, therefore there will be enhanced access to the wider public rights of way network via the new route of Footpath 22.
- 5.4 Some works will have to be carried out on the new route to improve it for public use:
- The footpath will be raised in line with the rest of the site and surfaced to an agreed specification along its length with a compacted stone finish to a width of 2.5 metres.
 - Between points F and G the gradient will be no steeper than 1 in 20.
- 5.5 The works will be carried out and funded by the applicant.
- 5.6 The order will come into effect 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.

6 Financial Implications

- 6.1 The applicant has agreed to pay in accordance with Dorset 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 Dorset 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.

7 Environmental Implications

- 7.1 The proposal will not have any effect on carbon emissions and supports alternative methods of travel to the car.

8 Well-being and Health Implications

- 8.1 Use of public rights of way promotes a healthy balanced lifestyle.

9 Other Implications

- 9.1 n/a

10 Risk Assessment

- 10.1 HAVING CONSIDERED: the risks associated with this decision; the level of risk has been identified as:
Current Risk: LOW

Residual Risk: LOW

11 Equalities Impact Assessment

- 11.1 The surface and gradient of the proposed new footpath are no less accessible than the current route.

12 Conclusion

- 12.1 The application to divert part of Footpath 22, Wimborne Minster meets the tests for order making set out under the TCPA and therefore should be accepted and an order made.
- 12.2 The order should include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion.
- 12.3 If there are no objections to a public path order, and the legal tests are considered to have been met, the order should be confirmed.
- 12.4 If the order is opposed, but the objections are not relevant, it should be submitted to the Secretary of State for confirmation, subject to the legal tests being fulfilled.

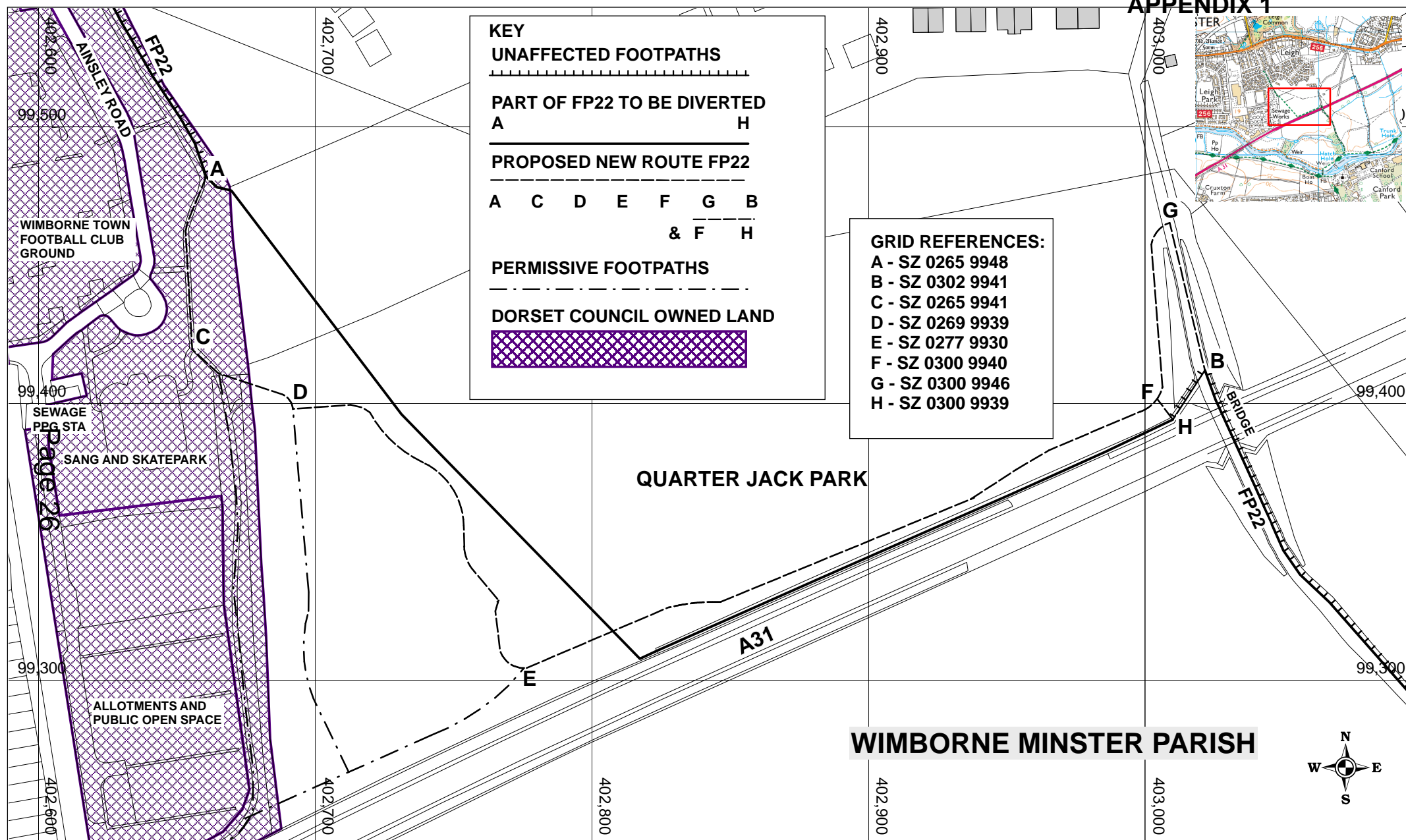
13 Appendices

- 1 Drawing P244/23/2
- 2 Plan showing development
- 3 Summary of consultation responses

14 Background Papers

The files of the Executive Director, Place (ref.RW/P244).

April 2023



SECTION 257, TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION TO DIVERT PART OF FOOTPATH 22, WIMBORNE MINSTER AT QUARTER JACK PARK

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: P244/23/2

Date: 13/04/2023

Scale: 1:1800

Cent X: 402,843

Cent Y: 99,392



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KEY:

- RED LINE BOUNDARY
- EXISTING ROUTE
- PROPOSED ROUTE
- FOOTPATH PROVIDED BY DEVELOPMENT BUT NOT PART OF PROW ROUTE

FOOTPATH CONSTRUCTION TO COMPRISE:

- 1) TO BE RAISED IN LINE WITH THE REST OF THE SITE
- 2) MATERIALS/SOILS TO BE LOW-FERTILITY AND ABSENT OF THISTLES, NETTLES AND DOCKS.
- 3) WIDTH TO BE 2500MM
- 4) GEOTEXTILE MEMBRANE FOR FULL WIDTH OF PATH
- 5) MINIMUM LAYER OF 100MM TYPE 1 LAID OVER GEOTEXTILE, AND BEYOND BY 150MM EITHER SIDE - SHAPED AS A BALANCED PROFILE WITH CENTRAL CROWN, COMPACTED, PROFILE TO BE A GENTLE CAMBER CIRCA 1:50 - 1:80 DOWN TO EITHER SIDE
- 6) OVERLAD WITHIN 75MM OF SELF-COMPACTING FOOTPATH GRANULAR MATERIAL, COMPACTED ("COTSWOLD" 10MM TO DUST, SELF-BINDING LIMESTONE) MAINTAINING BALANCE AND CROWN SHAPE (1:50 - 1:80 DOWN TO EITHER SIDE)
- 7) LINKS INTO THE DEVELOPMENT SITE TO BE SHORT, METALLED, LIT AND CONNECTED TO THE ADOPTABLE NETWORK.

STEPS ON EXISTING PROW ALIGNMENT TO BE RETAINED



PRELIMINARY
DRAWING/DESIGN IS STILL "IN DEVELOPMENT"
YOU ARE ADVISED TO MAKE DUE ALLOWANCE

B	FIXED TYPING ERROR IN NOTES	22.02.23	AF	MS
A	UPDATED DIVERSION ROUTE	25.11.22	AF	MS
Rev	Description	Date	By	Check

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Client

BARRATT
HOMES

Project Name
QUATER JACK PARK (PHASE 2)

Title
E222 FOOTPATH DIVERSION PLAN

Project Phase

PRELIMINARY

Checked By	Checked Date	Drawn By	Drawn Date
MS	23.09.22	AF	23.09.22
Client Drawing No.	Scale	(AT A1 SIZE)	
-	1:500		

PBA Drawing No. 041.0081.001 Revision B

Summary of consultation responses

Feb – March 2023

Name	Comments
BT	Openreach records indicate that no apparatus exists within the area of the proposed diversion
Fulcrum Pipelines	No objection to proposals
Last Mile	No objection to proposals
SGN	SGN records indicate that no apparatus exists within the area of the proposed diversion
SSE	SSE records indicate that apparatus exists within the area of the proposed diversion. The Diversion Order will allow continued access to utilities if located on the existing definitive route.
Claire Pinder, Senior Archaeologist, Dorset Council	There are recorded archaeological finds and features on and in the vicinity of the routes affected by this proposal but these do not constitute a constraint in the context of this proposal.
The Ramblers	<p>No objections to the diversion of the footpath. Improvements to the width and finish will be of benefit.</p> <p>Highlights possibility of cyclists using the path which may cause a problem and asks if anything can be done to mitigate this.</p> <p>OFFICER COMMENT:</p> <p>Furniture such as gates is not permitted on a route diverted under TCPA. However, should a problem with cyclists using the new path be identified in the future, Dorset Council will consider taking action to discourage or prevent this (e.g signage or installation of furniture)</p>