



Date of Meeting: 11 June 2020

Lead Member: Cllr Sarah Williams, Cllr Dave Bolwell and Cllr Kelvin Clayton,
Dorset Council members for Bridport

Lead Officer: Matthew Piles, Corporate Director for Economic Growth and
Infrastructure

Executive Summary:

This report considers an application to divert part of Bridleway 39, Symondsburry as shown on Drawing 19/18.

Equalities Impact Assessment:

The current and proposed routes have similar surfaces and gradient and therefore there is no negative impact on accessibility.

Budget:

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.

Risk Assessment:

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: LOW

Residual Risk LOW

Other Implications:

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.

Recommendations:

That:

- (a) The application to divert part of Bridleway 39, Symondsburry 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, it be confirmed by the Council without further reference to the Committee.
- (d) If objections are received to the Order which are of a similar nature to those already considered by the Committee, the Order should be submitted to the Secretary of State without further reference to the Committee.

Reasons for Recommendation:

- (a) The proposed diversion meets the legal criteria set out in the Highways Act 1980.
- (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) This report considers the objection to the pre-order consultation and also the order confirmation tests. If the committee resolves to make an order and no objections are received there would be no further material for the committee to consider.
- (d) In the event that objections of a similar nature to those already considered are received to the order, the committee will have already considered the objections in the light of the legal criteria and therefore Dorset Council can submit the Order to the Secretary of State for consideration without further reference to the Committee.

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.

Appendices:

1. Drawing 19/18
2. Parish Council's objection to diversion
3. Summary of other consultation responses

Background Papers:

The file of the Executive Director, Place (ref. RW/P200).

Officer Contact

Name: Carol McKay, Senior Definitive Map Technical Officer

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1 Background

- 1.1. Dorset Council has received an application to divert part of Bridleway 39, Symondsburry at Lower Eype Farm, as shown on Drawing 19/18 attached as Appendix 1.
- 1.2. This diversion is being made in the interest of the landowner as the current route of Bridleway 39, Symondsburry runs next to existing silage bays for which planning permission has been granted for conversion to a new single storey dwelling which will be occupied by the applicant. The diversion will therefore improve privacy and security of the new property. The bridleway runs alongside the new house and through the proposed garden and parking area for the property. The proposed route along an existing track also offers better views.
- 1.3. The current definitive route of Bridleway 39, Symondsburry runs from the unaffected part of Bridleway 43 at point A east up a grass hill to point B and then continues generally east across a concrete yard to point C.
- 1.4. The proposed new route of Bridleway 39, Symondsburry runs from point A generally east north east along a grass track to point D and north east up the grass track to point E where it joins the existing route of Footpath 43, Symondsburry, continuing north east then south east to point F and then generally south east along a concrete track to point C. Between points E – F – C the new bridleway follows the existing route of Footpath 43 (upgrading the footpath to bridleway between these points). The proposed new route re-joins the unaffected section of Bridleway 39, Symondsburry at point C.
- 1.5. This proposed diversion would be in the interests of the landowner as it would improve privacy and security.

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 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 bridleways as a whole;
- (d) the effect the diversion would have on other land served by the bridleways; 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 Dorset 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 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

2.7 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.

Rights of Way Improvement Plan

- 2.11 Dorset 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.
- 2.12 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.
- 2.13 Five themes have been identified for improving access in Dorset of which none are particularly relevant to the present case.

3 Consultation

- 3.1 The Council carried out a wide consultation in March / April 2020 and one letter of objection was received (attached in full as Appendix 2).
- 3.2 Dorset Councillors for Bridport, Cllr Sarah Williams, Cllr Dave Bolwell and Cllr Kelvin Clayton were consulted on the application and made no comments.
- 3.3 All other consultation responses are summarised in Appendix 3.

4 Objections

- 4.1 One objection was received to the consultation, from Symondsburry Parish Council.
- 4.2 Symondsburry Parish Council were previously consulted on proposals by the applicant prior to the submission of the application in 2016 and raised no objection at this time.

- 4.3 In their objection, Symondsburry Parish Council raised the following issues;
- 4.4 Parish Council; Concern that this application will move the Bridleway onto an existing footpath and permissive right of way.
- 4.5 Officer comment; A public right of way can be diverted onto another public right of way if the diversion results in higher rights (i.e. a bridleway can be diverted onto a footpath resulting in that section of footpath being upgraded to bridleway) or if the proposed new route is only partly on an existing public right of way. Therefore the proposed diversion is permitted since it meets both conditions. The existence of permissive rights does not affect the validity of the diversion order.
- 4.6 Parish Council; The bridleway has run through the farmyard for generations and the applicant would have been aware of that and the belief that the diversion should have been completed before planning permission was granted.
- 4.7 Officer comment; The applicant is fully aware of the location of the bridleway, and previously diverted Footpath 43 under the Town and Country Planning Act, which was affected by development. The existing bridleway cannot be diverted under the Town and Country Planning Act because it is not directly affected by development, therefore the applicant has correctly applied to divert it under the Highways Act. It was not possible or necessary to divert the bridleway before planning permission was granted.
- 4.8 Parish Council; The footpath that will become a bridleway was an 'informal' track put in by the previous landowner to stop people coming through the farmyard. The permissive part of the track isn't official, it is just where people wander trying to find the unmarked bridleway.
- 4.9 Officer comment; The proposal is to divert an existing recorded bridleway partly onto an existing footpath (E – F – C) and partly onto an unrecorded route (A – D – E). It is lawful for a landowner to make an alternative route available on a permissive basis, provided that the current right of way is not obstructed. Permissive routes are not "official" as there is no mechanism for recording them on the definitive map and permission can be withdrawn at any time.
- 4.10 Parish Council; The current bridleway is a better alternative, a hard surface, not muddy and it is flat instead of the proposed route which has a steep beginning heading west.

4.11 Officer comment; With regards to the surface of the bridleway, the current and proposed routes are considered to be comparable;

i) Current route A – B: grass Proposed route A – D – E – F: grass

ii) Current route B – C: concrete Proposed route F – C: concrete

4.12 Officer comment; It is assumed that the section of new bridleway which the Parish Council describe as having a “steep beginning heading west” is the part running between points C and F. The bridleway rises from 35 to 37 metres elevation between these two points and the gradient of the steepest section has been calculated as approximately 8% or 1 in 12. The current bridleway between B and C is flat.

4.13 There are no mandatory maximum gradients for public rights of way, but the Equality Act 2010 places a duty on the Council to take into account the needs of all people including those with reduced mobility. The British Horse Society guidance for bridleways recommends a 1 in 12 slope as an ideal maximum for ridden use.

4.14 Officers do not consider the increased gradient of the short section of bridleway between C and F (which is already a public footpath) to be less convenient to the public.

4.15 With regards to the gradient of the current bridleway between points A and B, this section rises from an elevation of 28 metres to 34 metres, with a gradient of approximately 19% or 1 in 5. In comparison, the proposed new route between points A – D – E – F rises from an elevation of 28 metres to 37 metres with a gradient of approximately 15% or 1 in 7.

4.16 Therefore whilst the diversion would reroute the path onto slightly higher ground, the bridleway’s steepest section between points A and B would be replaced with a more gradual incline between A – D – E – F. The diversion has a negligible impact on the surface, therefore overall the diversion would not have a negative impact on the accessibility of the bridleway.

4.17 No other objections were received.

5 Discussion

5.1 The proposed diversion is in the interest of the landowner by significantly improving privacy and security. Members of the public will also benefit from improved views from the new bridleway.

5.2 Significantly, neither The Ramblers or the British Horse Society have any objections to the proposed diversion.

- 5.3 The current termination points of the bridleway are unaffected by the diversion.
- 5.4 The current route between A – B – C is approximately 95 metres and the proposed new route between A – D – E – F – C is approximately 130 metres. This increases the length by 35 metres, however the entire length of the current route of Bridleway 43 is 2008 metres, therefore the increase in length of 35 metres is considered moderate in this context (1.74%). Officers do not consider that this would make the bridleway substantially less convenient to the public.
- 5.5 The width of the new route will be 3.4 metres between points A – D – E – F and 3 metres between points F and C.
- 5.6 The better views from the new route will make the diverted route more enjoyable for the public.
- 5.7 The diversion would have no material effect on the land served by the current route or over which the new routes.
- 5.8 The diversion will have no adverse effect on agriculture, forestry, flora, fauna and geological and physiographical features.
- 5.9 The proposal affects only the applicant's land. The National Trust own land immediately adjacent the affected section of bridleway west of point A and have indicated that they have no objection to the proposed diversion. Therefore it is unlikely that compensation would be payable under Section 28 of the Highways Act 1980
- 5.10 The order will be confirmed only on inspection and certification of the new bridleway by Dorset Council. If confirmed by the Secretary of State, the order will provide that the diversions are not effective until the route has been inspected and certified.
- 5.11 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.

6 **Conclusions**

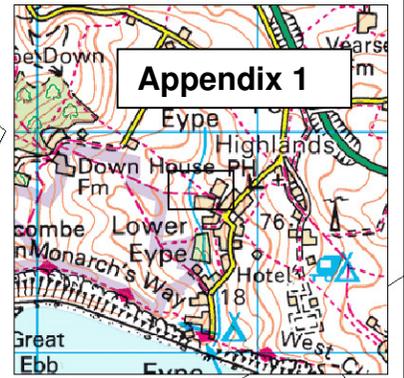
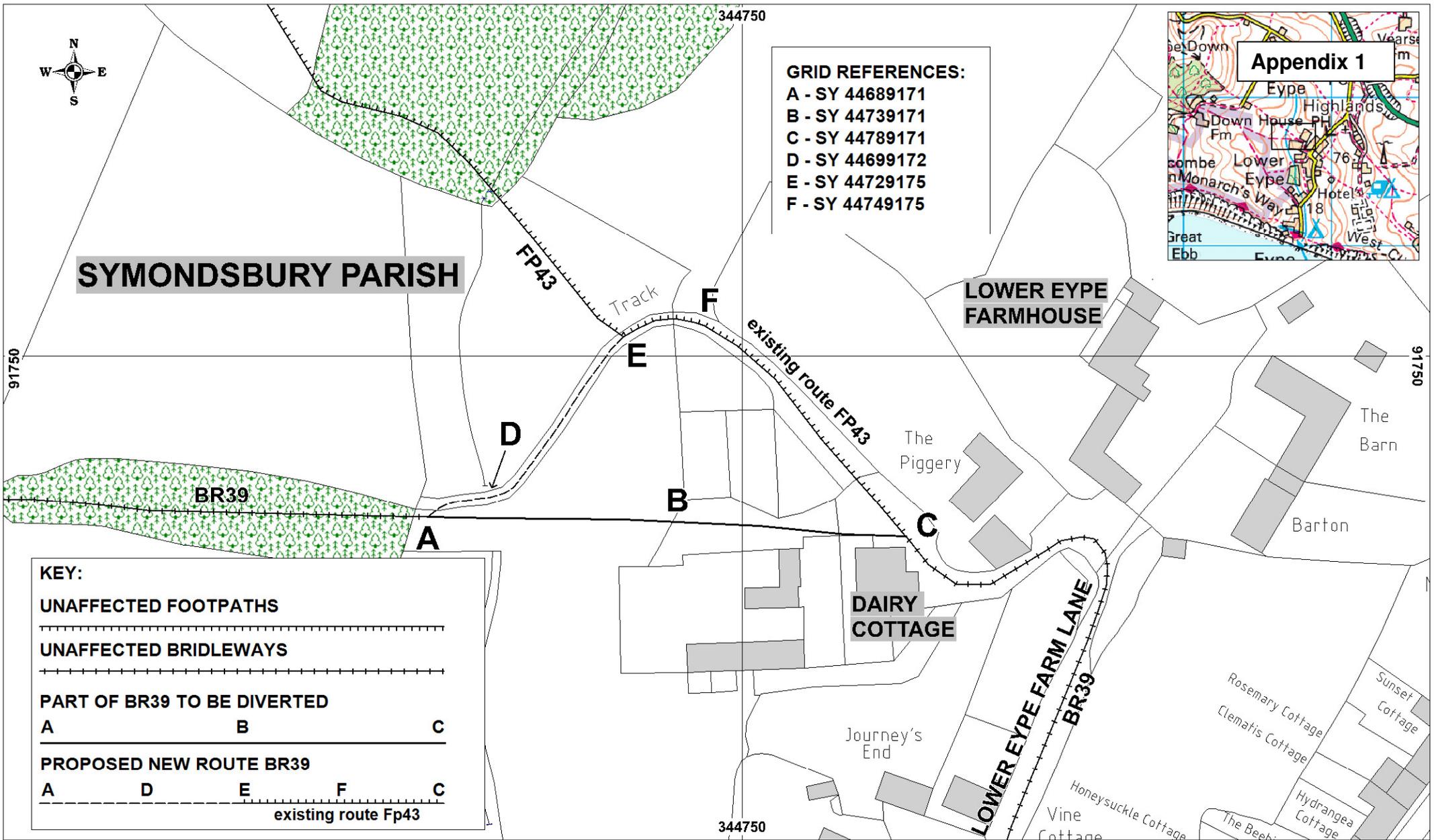
- 6.1 The application to divert part of Bridleway 39, Symondsburry meets the tests set out under the Highways Act 1980 and therefore should be accepted and an order made.
- 6.2 The Order should include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion.

- 6.3 If there are no objections to a public path order, as the criteria for confirmation have been met the order should be confirmed.
- 6.4 If objections are received to the order which are similar in nature to those already considered, the order should be submitted to the Secretary of State without further reference to the Committee.

Matthew Piles

Corporate Director for Economic Growth and Infrastructure

May 2020



SECTION 119, HIGHWAYS ACT 1980

APPLICATION FOR A PUBLIC PATH DIVERSION ORDER, BRIDLEWAY 39, SYMONDSBURY

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref:19/18

Date: 03/03/2020

Scale 1:1000 at A4

Drawn By: CAM

Cent X: 344745

Cent Y: 91737



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Objection from Symondsburry Parish Council:

From: Symondsburry Parish Council <symondsburry@dorset-aptc.gov.uk>
Sent: 15 April 2020 10:29
To: Carol Mckay
Subject: Section 119 Highways Act 1980 - Proposed diversion of Bridleway 39, Symondsburry at Lower Eype farm

This application will move the Bridleway onto an existing footpath and permissive right of way.

The bridleway has run through the farmyard for generations and the applicant would have been aware of that. We pointed out to the planners previously that there was a bridleway right past the front door of the proposed house and it should have been sorted before planning permission was granted. We believe that it is a reserved matter and work has already commenced.

The footpath that will become a bridleway was an 'informal' track put in by the former NAME REDACTED family to stop people coming through the farmyard. The permissive part of the track isn't even official, it is just where people wander trying to find the unmarked bridleway. The current bridleway is a better alternative, a hard surface, not muddy and it is flat instead of the proposed route which has a steep beginning heading west. Symondsburry Parish Council therefore object to this application.

Marilyn Stone
Parish Clerk
Symondsburry Parish Council

Summary of other consultation responses:

Name	Comments
The Ramblers	The proposed route of the bridleway is suitable and probably the one used by most walkers and riders. No reason at the present time not to support the proposed diversion.
British Horse Society	No objection
Southern Gas Networks	No objection
Western Power Distribution	Apparatus in area of diversion indicated on plan. No objection provided that the usual clause in respect of access to apparatus is included in the Order.
Wessex Water	No objection
Senior Archaeologist Dorset Council	There are at present no recorded archaeological finds or features or historic buildings on or in the immediate vicinity of the routes affected by this proposal. Historic environment considerations do not constitute a constraint in the context of this proposal.