

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

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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

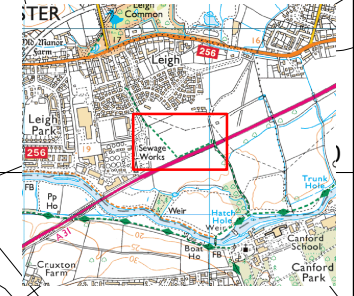
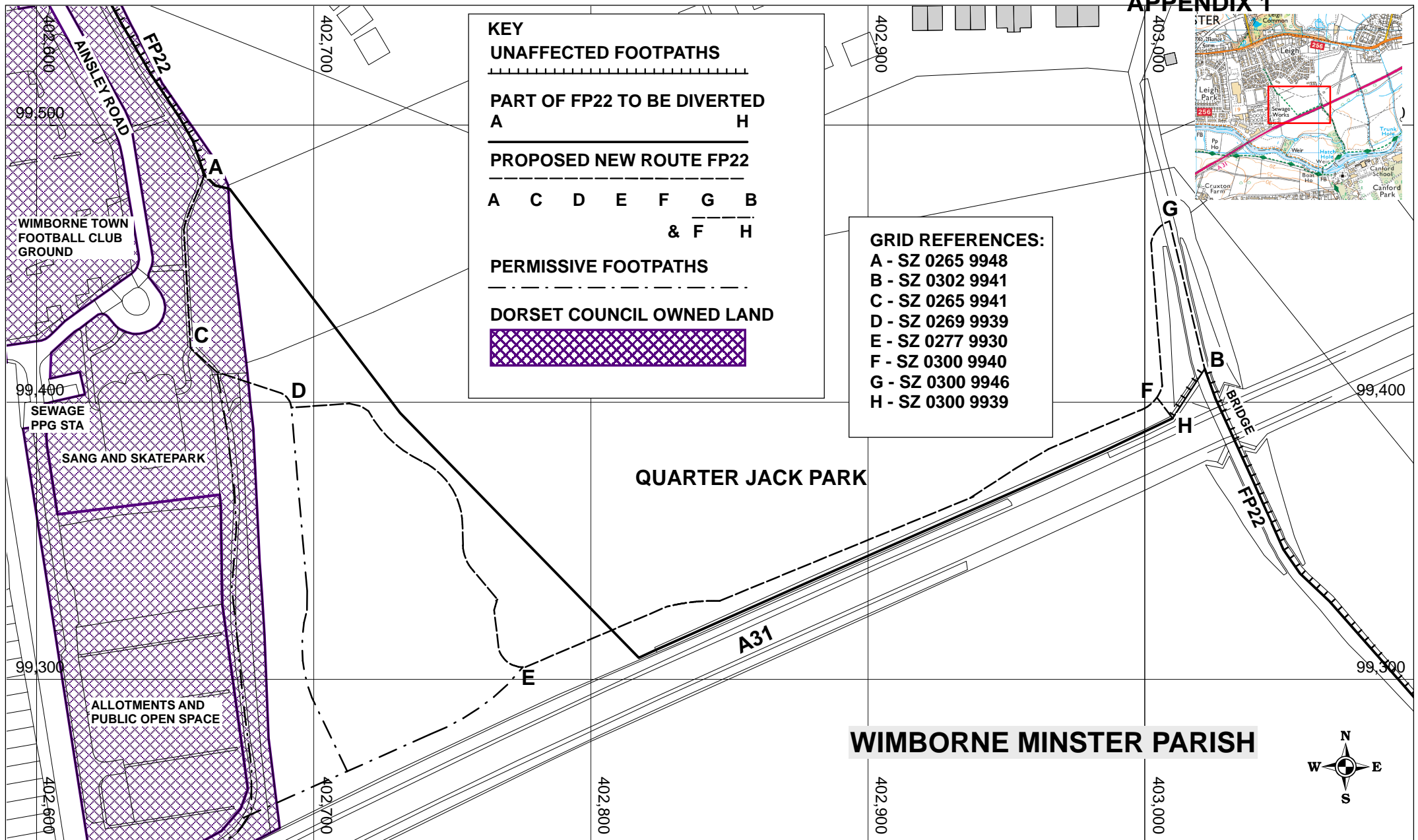
2 Plan showing development

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

© Crown copyright and database rights 2023
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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) OVERLAIN 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 ADAPTABLE 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.	Revision		
041.0081.001	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>