

# Strategic and Technical Planning Committee

## 4 March 2024

### Application to divert Footpath 1, Lyme Regis

#### For Decision

**Portfolio Holder:** Cllr D Walsh, Planning

**Local Councillor(s):** Cllr B Bawden, Lyme and Charmouth Ward

**Executive Director:** J Britton, Executive Director of Place

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**Report Status:** Public

#### Brief Summary:

This report considers an application to divert Footpath 1, Lyme Regis. Part of the affected land is registered to Dorset Council therefore in the interests of transparency, the application needs to be considered by the Strategic and Technical Planning Committee. 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 Footpath 1, Lyme Regis 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.
- (c) If the Order is unopposed, and is considered to meet the legal tests for Order confirmation, 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 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) 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 In 2015, Dorset County Council received an application from West Dorset District Council to divert Footpath 1, Lyme Regis as shown on Drawing P175/23/2 attached as Appendix 1. Following changes to local government structure<sup>1</sup> in Dorset in 2019, the application was transferred to Dorset Council.
- 1.2 Under the Coast Protection Act 1949, Dorset Council is currently delivering Phase IV of the Lyme Regis Coast Stabilisation Works - Environmental Improvements. The works, which began in April 2013, will secure the coastline between Church Cliff and East Cliff for the next 60 years, saving up to 480 homes from damage or loss of access.
- 1.3 As part of the engineering works the Council has constructed a new path connecting Charmouth Road car park to the eastern beach. The proposed diversion will reroute Footpath 1 onto this new path.
- 1.4 The current definitive route of Footpath 1, Lyme Regis runs from its junction with Church Street (A3052) at point A, east and north east along East Cliff, continuing generally north east along coastal slopes then generally north north west through the allotment gardens to join Spittles Lane at point B. The current route of Footpath 1 between points A and B is approximately 504 metres long.

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<sup>1</sup> On 1 April 2019 by virtue of the Bournemouth, Dorset and Poole (Structural Changes) Order 2018, Dorset County Council and the East Dorset, North Dorset, Purbeck, West Dorset districts and the borough of Weymouth and Portland were abolished and a single tier local government Dorset Council was established.

- 1.5 The proposed new route runs from its junction with Footpath 2 at point C east along a surfaced path to point D, north to point E, west to point F and generally north east along the sea wall walkway to point G, then generally north up wooden steps to point H, continuing generally east up wooden steps to point I and then continuing along a crushed stone path with steps generally north west, north, west north west then north east to point J, then north north east and north west to point K, where it enters Charmouth Road car park, then continuing through the car park along a surfaced path west south west, north west, west south west and north west to point L, west south west to point M, south south east to point N, west south west to point O, generally north to point P and generally west south west to its junction with Charmouth Road (A3052) at point Q. The proposed new route between points C and Q is approximately 666 metres long.
- 1.6 All registered landowners affected by the proposal have been notified of the proposed diversion and no objections have been received. Dorset Council owns part of the proposed new route of Footpath 1 as shown on Drawing P175/23/3 (attached as Appendix 2).
- 1.7 This diversion is being made in the interests of the public as the current route is impassable due to coastal erosion along the middle section and of the landowner due to the obstruction by allotment gardens at its northern end and a parking area along East Cliff. In addition the diversion will enable future maintenance of the proposed new route by Dorset Council's Greenspace Team once the path is designated as a public footpath.
- 1.8 The diverted route will also form part of the South West Coast Path and the section of the new King Charles III England Coast Path National Trail proposed between The Cobb, Lyme Regis and Rufus Castle, Portland.

## **2 Law**

### **Highways Act 1980**

- 2.1 Section 119 of the Highways Act 1980 allows a footpath, bridleway or restricted byway (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 footpaths, bridleways or restricted byways as a whole;
- (d) the effect the diversion would have on other land served by the footpaths, bridleways or restricted byways; and
- (e) the effect on the land over which the diversion will run and any land held with it.

2.4 Any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

2.5 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 or extinguishment 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.

2.6 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".

2.7 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**

2.8 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 / creation order instead of being the subject of a separate legal event order.

## **Equality Act 2010**

2.9 As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have “due regard” to this duty. There are 3 main aims:-

- Removing or minimising disadvantages suffered by people due to their protected characteristics
- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people
- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

2.10 Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have “regard to” and remove or minimise disadvantage and in considering the merits of this application the local authority has taken into consideration the requirements of the Public Sector Equalities Duty.

## **2.11 Human Rights Act 1998 – Human rights implications**

2.12 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.

2.13 When considering whether it is expedient to make the order a council must consider the rights of any affected landowner under Article 8 and Article 1 of the First Protocol and in particular have due regard to any argument put forward by an affected landowner that their rights would be infringed.

2.14 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**

2.15 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.

- 2.16 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.
- 2.17 Five themes have been identified for improving access in Dorset of which the following 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 1.9 Ensure that the work of Dorset Council and partners continues to protect and enhance Dorset's natural and cultural heritage

**Theme 3: Providing a safer and more accessible network**

- Theme 3.14 Better integrate PRow/sites with public transport and well designed car parks – facilitating sustainable transport, tourism and economy and environmental protection

**3 Consultation**

- 3.1 The Council carried out a wide consultation in November – December 2023 and no objections were received.
- 3.2 All registered landowners affected by the proposal have been notified of the proposed diversion and no objections have been received. Dorset Council owns part of the proposed new route of Footpath 1 as shown on Drawing P175/23/3 (attached as Appendix 2).
- 3.3 Cllr Bawden, Dorset Council member for Lyme and Charmouth Ward was consulted on the application and made no comments.
- 3.4 The Lyme Regis Society (LRS) suggested two alternatives to the northern part of the diversion between points K and Q. The alternative proposals were discussed at a site meeting held in December 2023 with Council officers and a representative of the LRS.
- 3.5 The first alternative proposal crossed land owned by two additional landowners, passed through parking spaces and a fenced skate park and would require significant work to the wooded area east of the football ground and was therefore considered to be not viable within the scope of the application.

- 3.6 A second alternative proposal, which was within Dorset Council owned land, was also discussed. The suggested route would run north from point K through the car park and then west along an existing surfaced path which is separated from the car park by bollards.
- 3.7 However, this route would send walkers through the middle of a busy car park and require two dropped kerbs to be installed where it meets Charmouth Road, whereas the proposed diverted route K – L – M – N – O – P – Q provides walkers with a route which is separated from cars and step free access to Charmouth Road. Although the diversion includes steps on the section between G and J, where feasible step free access is preferred on new public rights of way.
- 3.8 After further consideration, LRS acknowledged that whilst the proposed new route through the car park was less scenic than the alternative routes, it was the best option for public safety.
- 3.9 The Ramblers support the proposed diversion stating that the “land movement along this section of the coast rendered this footpath unusable many years ago and the provision of an alternative quiet pedestrian route, away from the busy A352 with its narrow footways, is welcome improvement”.
- 3.10 All consultation responses are summarised in Appendix 3.

## 4 Discussion

### Interest of the public and landowner

- 4.1 The proposed diversion is in the interest of the public as the current route is impassable due to coastal erosion and the landowners due to obstruction by the allotment gardens and a parking area along East Cliff.
- 4.2 The diversion will enable future maintenance of the proposed new route by Dorset Council’s Greenspace Team once the path is designated as a public footpath as there will be an official funding stream available.
- 4.3 Members of the public will benefit from improved access as the current footpath is not available on the ground and the new route enables pedestrians to walk from Charmouth Road car park to the east end of Lyme Regis town centre via public footpaths.
- 4.4 All registered landowners were consulted on the proposed diversion and no objections were received.

- 4.5 Parts of the current route are on unregistered land including the northern section through the allotment gardens. No response has been received from any owners of unregistered land following the consultation process.
- 4.6 It is understood that the allotment gardens are owned by Lyme Regis Town Council and rented to the Lyme Regis Allotment Association. No objection was made by Lyme Regis Town Council and the Lyme Regis Allotment Association indicated they are happy with the proposed diversion.
- 4.7 Therefore officers consider that the diversion is in the interest of all affected landowners.

### **Termination points**

- 4.8 The southern termination point of Footpath 1 will be moved from its junction with the A3052 (Church Street) at point A, approximately 200 metres south south east to its junction with Footpath 2 at point C. The new termination point maintains a connection with the A3052 (Church Street) but is more convenient to the public as it connects with Footpath 2 whereas the current termination point at point A requires walkers to walk along narrow footways along the A3052 in order to continue north or south from point A.
- 4.9 The northern termination point of Footpath 1 will be moved from its junction with Spittles Lane at point B, approximately 280 metres south west to its junction with the A3052 (Charmouth Road) at point Q. The new termination point is more convenient to the public as there is no recorded public access along Spittles Lane, while the new termination point at point Q connects walkers to the wider public rights of way network via Charmouth Road.

### **Convenience**

- 4.10 The current route of Footpath 1 between points A and B is approximately 504 metres long and the proposed new route between points C and Q is approximately 666 metres long. This will result in an increased route length of approximately 162 metres which is considered modest taking into account the location of the footpath and its designation as a long-distance national trail.
- 4.11 Overall the gradient and surface are more accessible than the current definitive footpath taking into account the coastal erosion affecting the current route.
- 4.12 As discussed in 4.8 and 4.9 above the new termination points are convenient to the public. The southern termination point at point C joins Footpath 2 which leads to the A3052 (Church Street) and therefore connects walkers with Lyme Regis town centre.

- 4.13 The northern termination point at point Q joins the A3052 (Charmouth Road) which also connects with Footpath 3 to the north.
- 4.14 Overall, officers consider that the diversion is not substantially less convenient to the public when considering the change in length, accessibility and the new termination points.

### **Public enjoyment of the footpath**

- 4.15 The proposed new footpath is a safe route away from traffic, with extensive coastal views. The footpath has a crushed stone all-weather surface between points I and K, with a sealed surface between C and G and K and Q.
- 4.16 The proposed new footpath is described by the Ramblers as a “quiet pedestrian route” and a welcome improvement to the current footpath which has been unusable for several years due to coastal land movement.

### **Other considerations**

- 4.17 The diversion would have no material effect on the land served by the current route or over which the new route runs.
- 4.18 The proposal affects Dorset Council land and land registered to seven additional landowners, who have not indicated any objection to the proposals. Given the route of the proposed diversion along an existing route which has been in use for several years, it is unlikely that compensation would be payable under Section 28 of the Highways Act 1980.
- 4.19 Several sections of the current and proposed routes of Footpath 1 are unregistered. Dispensation will be obtained from the Secretary of State before the Order is made.
- 4.20 Some works will have to be carried out on the new route to improve it for public use:
- Removal of gates at points J and K
- 4.21 The works will be carried out and funded by Dorset Council.
- 4.22 The order will be confirmed only on completion of these works. If confirmed by the Secretary of State, the order will provide that the diversion is not effective until the works have been completed and certified.
- 4.23 If the diversion order is unopposed the order should be confirmed as the tests for making and confirming a diversion order (as set out in paragraphs 2.1 – 2.3) have been met.

## **Rights of Way Improvement Plan**

4.24 The diversion 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 1.9 Ensure that the work of Dorset Council and partners continues to protect and enhance Dorset's natural and cultural heritage
- Theme 3.14 Better integrate PRow/sites with public transport and well designed car parks – facilitating sustainable transport, tourism and economy and environmental protection

## **5 Financial Implications**

5.1 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.

## **6 Natural Environment, Climate & Ecology Implication**

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

## **7 Well-being and Health Implications**

7.1 Use of public rights of way promotes a healthy balanced lifestyle.

## **8 Other Implications**

8.1 n/a

## **9 Risk Assessment**

9.1 HAVING CONSIDERED: the risks associated with this decision; the level of risk has been identified as:

Current Risk: LOW

Residual Risk: LOW

## 10 Equalities Impact Assessment

- 10.1 The surface and gradient of the proposed new footpath are more accessible than the current route. This should improve accessibility for those with mobility issues and officers do not consider there will be any impacts on people with other protected characteristics.

## 11 Conclusion

- 11.1 The application to divert Footpath 1, Lyme Regis meets the tests under Section 119 of the Highways Act 1980.

### 11.2 Order making;

- Footpath 1, Lyme Regis is to be diverted in the interest of the public as the current route is impassable due to coastal erosion and in interests of the landowner as the current route is obstructed by allotment gardens at its northern end and a parking area along East Cliff. The new route is already in place. The diversion will enable future maintenance of the proposed new route by Dorset Council's Greenspace Team once the path is designated as a public footpath.
- The termination points are considered to be substantially as convenient to the public as they improve the connection with the network of public roads and public rights of way.

### 11.3 Order confirmation;

- The diversion of Footpath 1, Lyme Regis is expedient in the interests of the public and the landowner;
- The diversion is not substantially less convenient to the public as the increase in length is considered modest, the gradient and surface are more accessible than the current footpath and the new termination points provide a good connection to other roads and footpaths within Lyme Regis.

It is expedient to confirm the order as:

- The public enjoyment of the footpath would be enhanced by the diversion.
- The diversion would have no material effect on the land served by the current route or over which the new route runs.

- 11.4 The application should be accepted and a diversion order made.

- 11.5 If unopposed, the diversion order should be confirmed by Dorset Council.

11.6 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.

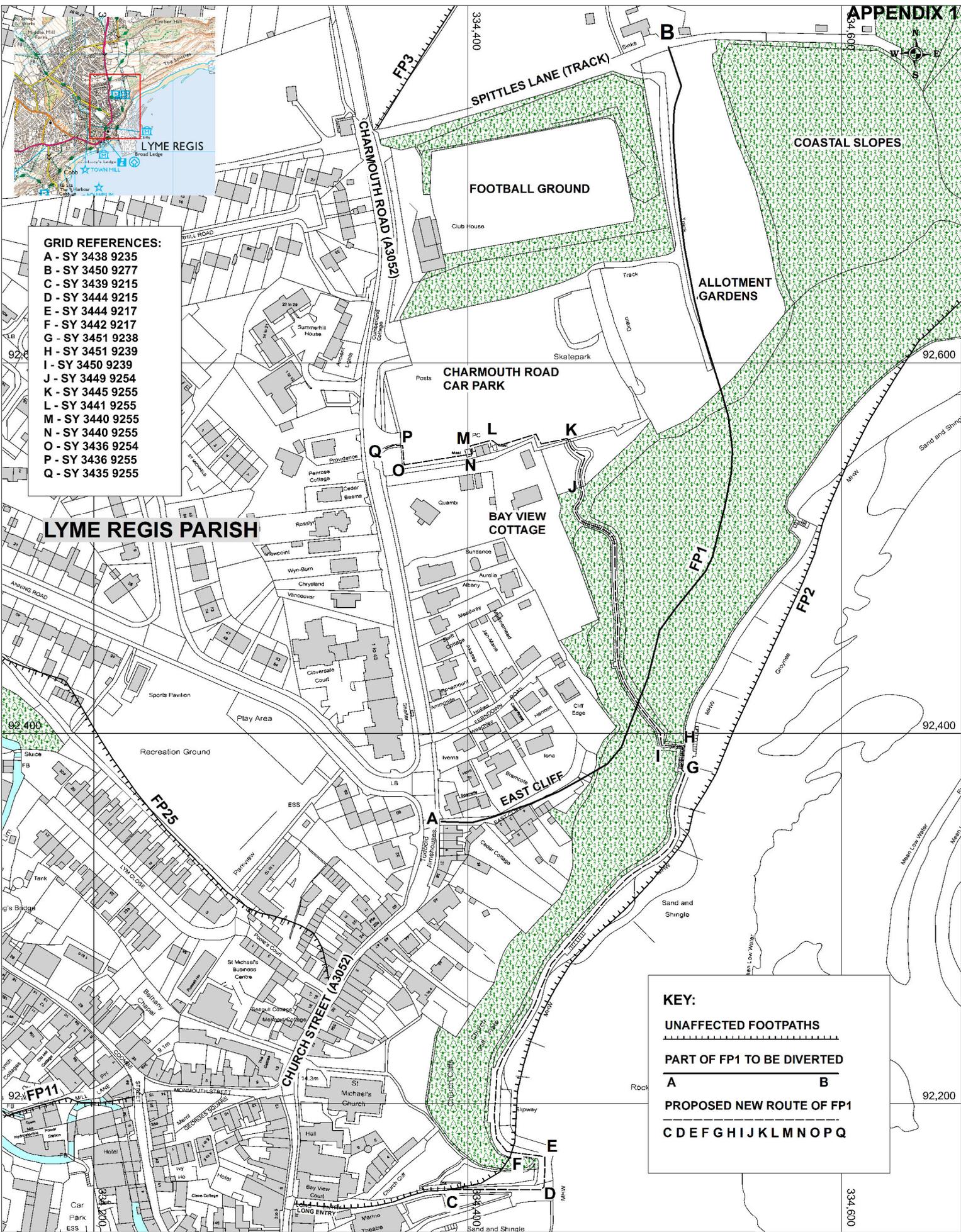
## 12 **Appendices**

- 1 Drawing P175/23/2 – Proposed diversion
- 2 Drawing P175/23/3 – Dorset Council owned land
- 3 Summary of consultation responses

## 13 **Background Papers**

The files of the Executive Director, Place (ref RW/P175).

**February 2024**



- GRID REFERENCES:**
- A - SY 3438 9235
  - B - SY 3450 9277
  - C - SY 3439 9215
  - D - SY 3444 9215
  - E - SY 3444 9217
  - F - SY 3442 9217
  - G - SY 3451 9238
  - H - SY 3451 9239
  - I - SY 3450 9239
  - J - SY 3449 9254
  - K - SY 3445 9255
  - L - SY 3441 9255
  - M - SY 3440 9255
  - N - SY 3440 9255
  - O - SY 3436 9254
  - P - SY 3436 9255
  - Q - SY 3435 9255

**KEY:**

- UNAFFECTED FOOTPATHS
- PART OF FP1 TO BE DIVERTED
- PROPOSED NEW ROUTE OF FP1

A B

C D E F G H I J K L M N O P Q

**SECTION 119, HIGHWAYS ACT 1980  
APPLICATION FOR A PUBLIC PATH DIVERSION ORDER  
FOOTPATH 1, LYME REGIS**

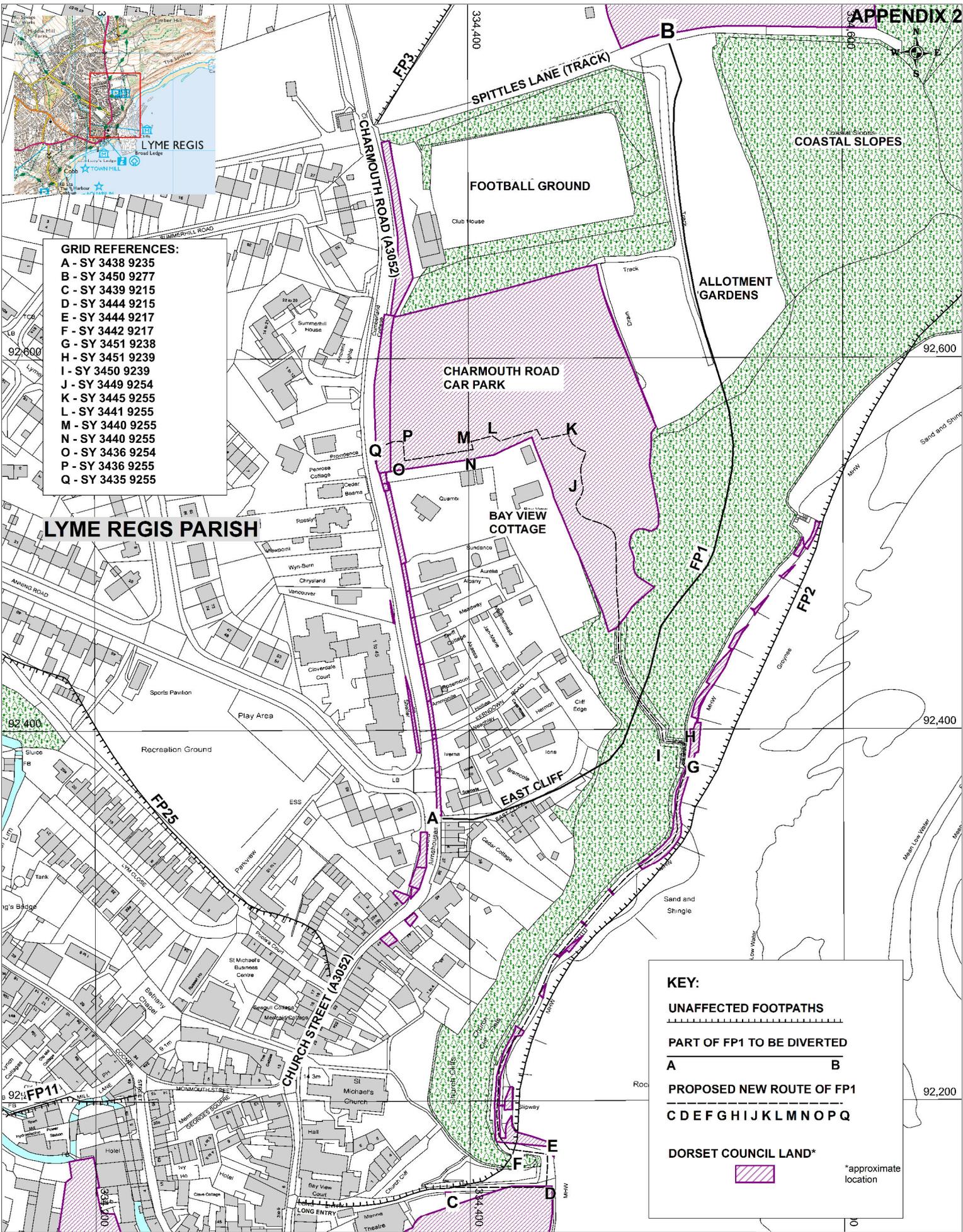
**THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS**

**Ref:P175/23/2**

Date: 24/10/2023  
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Drawn By: CAM  
Cent X: 334546  
Cent Y: 92558

**Dorset Council**

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**KEY:**

UNAFFECTED FOOTPATHS  
 -----

PART OF FP1 TO BE DIVERTED  
 -----

A B

PROPOSED NEW ROUTE OF FP1  
 -----

C D E F G H I J K L M N O P Q

DORSET COUNCIL LAND\*  
 \*approximate location

**SECTION 119, HIGHWAYS ACT 1980  
 APPLICATION FOR A PUBLIC PATH DIVERSION ORDER  
 FOOTPATH 1, LYME REGIS  
 DORSET COUNCIL LAND**

**THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS**

**Ref:P175/23/3**

**Date: 01/12/2023**

**Scale 1:1800 at A3**

**Drawn By: CAM**

**Cent X: 334407**

**Cent Y: 92460**



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## Summary of consultation responses

Name	Comments
BT Openreach	Apparatus exists within area of proposed diversion.
National Grid	Apparatus exists within area of proposed diversion.
Southern Gas Networks	No apparatus indicated on plan
Senior Archaeologist	There are a number of recorded archaeological finds and features on and in the immediate vicinity of the routes affected by this proposal.
Dorset Council	However, the nature of the proposed change is such that I don't feel that historic environment considerations constitute a constraint in the context of this proposal.
Dorset Campaign to Protect Rural England (Dorset CPRE)	Dorset CPRE got in touch with local member the Lyme Regis Society (LRS) regarding the proposed diversion and forwarded their suggestions.  Accepts LRS's view that the proposed route should stand having considered other options.
Lyme Regis Society (LRS)	Suggested an alternative route running from point K along the eastern edge of the car park and the eastern boundary of the football club ground, or a route running from point K along the eastern edge of the car park to the northern boundary of the car park and west to Charmouth Road.  Following a site meeting with Dorset Council, LRS accepted that the proposed diversion was a safer option than either of the alternatives.
Open Spaces Society	Neutral position
Environment Agency	No comments
Lyme Regis Allotment Association	Happy with the diverted route.

## Supporting the proposal

Ramblers	Supports the diversion as the current footpath has been unusable for several years due to land movement along the coast. Alternative footpath is quiet pedestrian route and is a welcome improvement.
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