

Strategic and Technical Planning Committee

30 June 2025

Application to divert part of Footpath 46, Okeford Fitzpaine at Darknoll Farm

For Decision

Cabinet Member and Portfolio:

Cllr S Bartlett, Planning and Emergency Planning

Local Councillor(s):

Cllr Steve Murcer

Executive Director:

J Britton, Executive Director for Place Services

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Report Status: Public

Brief Summary:

This report considers an application to divert part of Footpath 46, Okeford Fitzpaine in the light of objections received and recommends that the diversion order is made on the basis that the relevant legal tests have been met.

Recommendation:

That:

- (a) The application to divert part of Footpath 46, Okeford Fitzpaine as shown on drawing P256/25/1 attached as Appendix 1, be accepted and the diversion order made;
- (b) The order includes 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 is confirmed by the Council.
- (d) If the Order is opposed, and the objections to the order are of a similar nature to those already considered by the Committee, it be submitted to the Secretary of State without further reference to the 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 public path orders 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 an opposed order itself but can submit it to the Secretary of State for confirmation, subject to the legal tests being fulfilled. 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 light of the legal criteria and therefore Dorset Council will submit the order to the Secretary of State for confirmation

Report

1 Background

- 1.1 Dorset Council has received an application to divert part of Footpath 46, Okeford Fitzpaine at Darknoll Farm as shown on Drawing P256/25/1 attached as Appendix 1.
- 1.2 The current definitive route of Footpath 46 begins at the northern edge of Okeford Fitzpaine village north west of Mary Gardens. It passes along estate roads then north west to cross footpath N48/44 at point A on Drawing P256/25/1, across a bridge, through a field then across a footbridge and through a gate, then north west crossing a stile to the east of Darknoll Farm and through a field gate to point B and then continuing north west to the road.

- 1.3 The proposed new route of Footpath 46 from Point C follows the hedge line west to point D round a tree then continuing west to Point E and through a field gate to Point B. The new route will be accessed from the existing Footpath 44.
- 1.4 The application is in the interests of the landowner as it allows for better management of livestock as set out in paragraphs 3.14 and 3.15.
- 1.5 There are no other affected landowners.

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 affected by it is expedient;
 - (b) the diversion would not result in a path that is substantially less convenient to the public;and that it is expedient to confirm the order having regard to:
 - (c) the effect the diversion would have on public enjoyment of the footpath as a whole;
 - (d) the effect the diversion would have on other land served by the current footpath; and
 - (e) the effect on the land over which the diversion will run and any land held with it.

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

- 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 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.
- 2.5 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.

Equality Act 2010

- 2.8 Section 149 of the Equalities Act 2010 puts a duty on public authorities to have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (a) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (b) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This is considered in section 10 below.

Human Rights Act 1998 – Human rights implications

- 2.9 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.

- 2.10 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.
- 2.11 Section 28 of the Highways Act 1980 provides that a person with an interest in land affected by the consequence of the coming into operation of a public path order can make a claim for compensation for the depreciation of land value or damage suffered by being disturbed in his enjoyment of land.
- 2.12 The recommendation is based on the application of the test in section 119 of the Highways Act 1980 which balances the rights of the affected owners and the public.

Rights of Way Improvement Plan

- 2.13 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.
- 2.14 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.
- 2.15 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 1.6 Improve accessibility of the network.

3 Consultation

- 3.1 The original proposal to divert part of Footpath 46 as shown on Drawing P256/24/1 (Appendix 2) was consulted on in February 2024 and 6 objections were received, including the Parish Council with one representation broadly in support. The Ramblers were also supportive.
- 3.2 The Councillor for Blackmore Vale Ward at that time, Cllr Pauline Batstone, was consulted and made no comment.
- 3.3 Several responses to the original application mentioned the directness of the existing route and the fact the route has been in use for a long time.
- 3.4 In response to the objections received, the applicants agreed to amend the proposal following meetings with the Parish Council, site visits and discussions with officers.
- 3.5 The proposal was revised so that the proposed new route of Footpath 46 runs from Point C on Drawing P256/25/1 eastwards along the northern side of a hedge to point D and then continuing east to a field gate at point E and on to rejoin the existing route of Footpath 46 at point B.
- 3.6 A second consultation on the amended proposals was carried out in March and April 2025 and was sent to all original consultees as well as all respondents to the February 2024 consultation. Site notices were also posted at both ends of the proposed diversion.
- 3.7 The Councillor for Blackmore Vale Ward, Cllr Steve Murcer, was consulted and made no comment.
- 3.8 One objection was received to the revised proposal.
- 3.9 One representation in support was received to the revised proposal.

- 3.10 The Ramblers' representative walked the revised route and raised several questions. They were concerned the proposed new route by the tree at point D would be prone to becoming muddy as it was below both field levels either side. In response the landowner confirmed that they will raise the level of the new route up to field level with gravel/stone in this area. A second, related, question was asked about the water troughs and the risk of muddy ground around them as livestock assemble to drink. The landowner confirmed that the troughs will be moved 3m away from the new path. It was also confirmed that the existing field gate at point E was being retained.
- 3.11 The Ramblers confirmed that they were satisfied that the issues they raised would be resolved and raised no further objection.
- 3.12 All consultation responses are summarised in Appendices 3 and 4.

Legal Tests

- 3.13 The tests for making an order are set out and broken down in the following paragraphs. The objector's position is also set out along with officers' comments
- 3.14 Legal test: A footpath or bridleway (or part of one) can be diverted in the interests of the landowner, lessee or occupier or of the public, subject to certain criteria.
- 3.15 Objector's comment: Lack of Necessity or Expediency.

The diversion has not been shown to be necessary by the landowner - no evidence of underlying need has been given in the order. While the land in question currently not in use it has been used for agriculture many years without any significant issues with cattle management

Officer comment: Officers consider the proposed diversion is in the interest of the landowner for better stock management. Currently the footpath bisects several fields which makes it difficult to keep cattle and the public apart, including dogs and their waste. The proposed diversion enables the landowner to separate the public from the cattle more easily making it safer for both the public and the livestock.

- 3.16 Legal test: A public path diversion order shall not alter a point of termination of the path or way—
- (a) if that point is not on a highway; or

(b) (where it is on a highway) otherwise than to a point which is on the same highway or a highway connected with it, and which is substantially as convenient to the public.

3.17 Officer comment: The northern termination point of Footpath 46 is unaffected and the southern termination point would be moved from its junction with Footpath 44 at point A, to a point 330 metres north north east to point C retaining its connection with the same Footpath . The remaining undiverted part of Footpath 46 continues as before in a south westerly direction from Point A through to Okeford Fitzpaine.

3.18 Legal test:

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 affected by it is expedient;

(See above at 3.14 regarding Landowner interest)

(b) the diversion would not result in a path that is substantially less convenient to the public;

Objector's Comment: Negative Impact on Public and Increased Burden

The diversion makes the footpath longer and includes much steeper inclines than the current path making it less convenient, particularly for those less able.

Officer Comment: Although the increase in distance of approximately 300m does make the overall route from A to B (via the diverted path) longer, officers do not feel that this is substantially less convenient as, although the path can be used to walk from Okeford Fitzpaine to Sturminster Newton, officers have been informed it is mainly used as a recreational circular path.

With regard to the steepness of the routes, contour lines show the incline to be roughly similar at 1:17 at the steepest part of the current route (between points A and B) and 1:17 at the steepest part of the diverted route (between points A and C on Footpath 44, which walkers would need to walk to access the diverted route of Footpath 46). The gradient of the proposed diversion is 1:18 from point C westwards (see Appendix 5).

Both the current footpath and the section of Footpath 44 between A and C cross small bridges. There are gates on the bridge on the current route just to the west of Point A and also two gates on the bridge further to the west of Point A on the current route. Across the field to the north west there is a double stile on the current route and one further field gate to the south of Point B. There is a gate on the bridge on the route of Footpath 44 and one further field gate on Footpath 44 just to the south of Point C. On the proposed diversion there is a field gate at Point E, therefore the proposed diversion is more accessible.

and that it is expedient to confirm the order having regard to:

- (c) the effect the diversion would have on public enjoyment of the footpath as a whole;

Objector's Comment: Loss of Scenic or Natural Features.

Routing the diversion against a high hedge removes the view across open fields and detracts from the enjoyment gained on the existing path.

Officer comment: Officers consider that views from the proposed new route are better than those from the current footpath. On the current route walking from A-B, there are limited views of the wider countryside as the route is up an incline, towards a high hedge. In the opposite direction, (from B to A) however, there are expansive views to the south, these views are roughly the same using the part of Footpath 44 that links with the proposed diverted part of Footpath 46. From the proposed new route C – D – E – B, in either direction, the views to the north are expansive and considered to be much better than those from the original proposal.

- (d) the effect the diversion would have on other land served by the footpath; and
- (e) the effect on the land over which the diversion will run and any land held with it.

3.19 Legal Test (repeated from above): ...and that it is expedient to confirm the order having regard to the effect which—

the coming into operation of the order would have as respects other land served by the existing right of way; and...

...any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

Officer comment: The diversion is wholly within the land under the ownership of the applicant. Therefore, there is no impact on other land served by the existing right of way and the impacts on the applicant's land are considered above. As a result, officers consider that the test in s119(6) is met.

4 Discussion

- 4.1 The diversion is considered to be in the landowner's interest as it enables the fields to be used in a more efficient manner when containing livestock. The new termination points are substantially as convenient as the current termination points and the revised route, as a result of multiple discussions between the landowner, the Parish Council and local residents, is acceptable in terms of convenience and enjoyability which satisfies the legal tests.
- 4.2 Officers consider that the Council should make an Order. If similar objections are received to the Order, the Council should submit the Order to the Secretary of State and support confirmation of the Order. The diversion satisfies the relevant legal tests and in particular with regard to the interests of the landowner, the termination points of the path, the new route is not substantially less convenient to the public and it does not negatively impact on public enjoyment of the route.
- 4.3 The following works will be carried out on the new route to improve it for public use:
 - a) Moving the water troughs away from the walked route and putting up some fencing to aid separation of livestock from pedestrians.
 - b) Laying stone chippings on footpath at Point D to raise level and improve drainage.
- 4.4 The works will be carried out and funded by the applicant.
- 4.5 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.

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 the order is the subject of an objection.

6 Natural Environment, Climate & Ecology Implications

- 6.1 The Order, if made and confirmed will not have any effect on carbon emissions and supports alternative methods of transport 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

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 no less accessible than the current route. The proposed route avoids a stile on the current route and the applicant has made a commitment to change another stile on the footpath outside the area of the application to more accessible 'kissing gates' to meet the requirements of British Standard BS5709:2018.

11 Conclusion

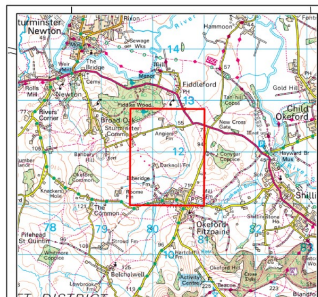
- 11.1 The objection remains outstanding; it is therefore necessary for the Committee to decide whether or not to make the Order. If the Order is unopposed, the Council can confirm the Order itself.
- 11.2 If the Order is opposed, and the objections to the Order are of a similar nature to those already considered by the Committee, it should be submitted to the Secretary of State without further reference to the Committee
- 11.3 The recommendation is that
 - (a) The Order be made and advertised. If objections are received and are similar to those already received, the Order is submitted to the Secretary of State for determination; and
 - (b) The Council supports the confirmation of the Order
- 11.4 This would enable an independently appointed Inspector to decide if the Order meets the legal tests for making and confirmation.

12 Appendices

- 1) Drawing P256/25/1
- 2) Drawing P256/24/1
- 3) Representations to initial application
- 4) Representations to revised application
- 5) Plan showing contours

13 Background Papers

The file of Executive Lead for Place (ref: RW/P256)



GRID REFERENCES:

- A ST 8043 1143
 B ST 8013 1180
 C ST 8056 1174
 D ST 8041 1180
 E ST 8014 1180

MINIMUM 1.2M GAP AT
 POINT D
 FIELD GATE AT E

KEY:

UNAFFECTED FOOTPATHS

PART OF FP46 TO BE DIVERTED

A

B

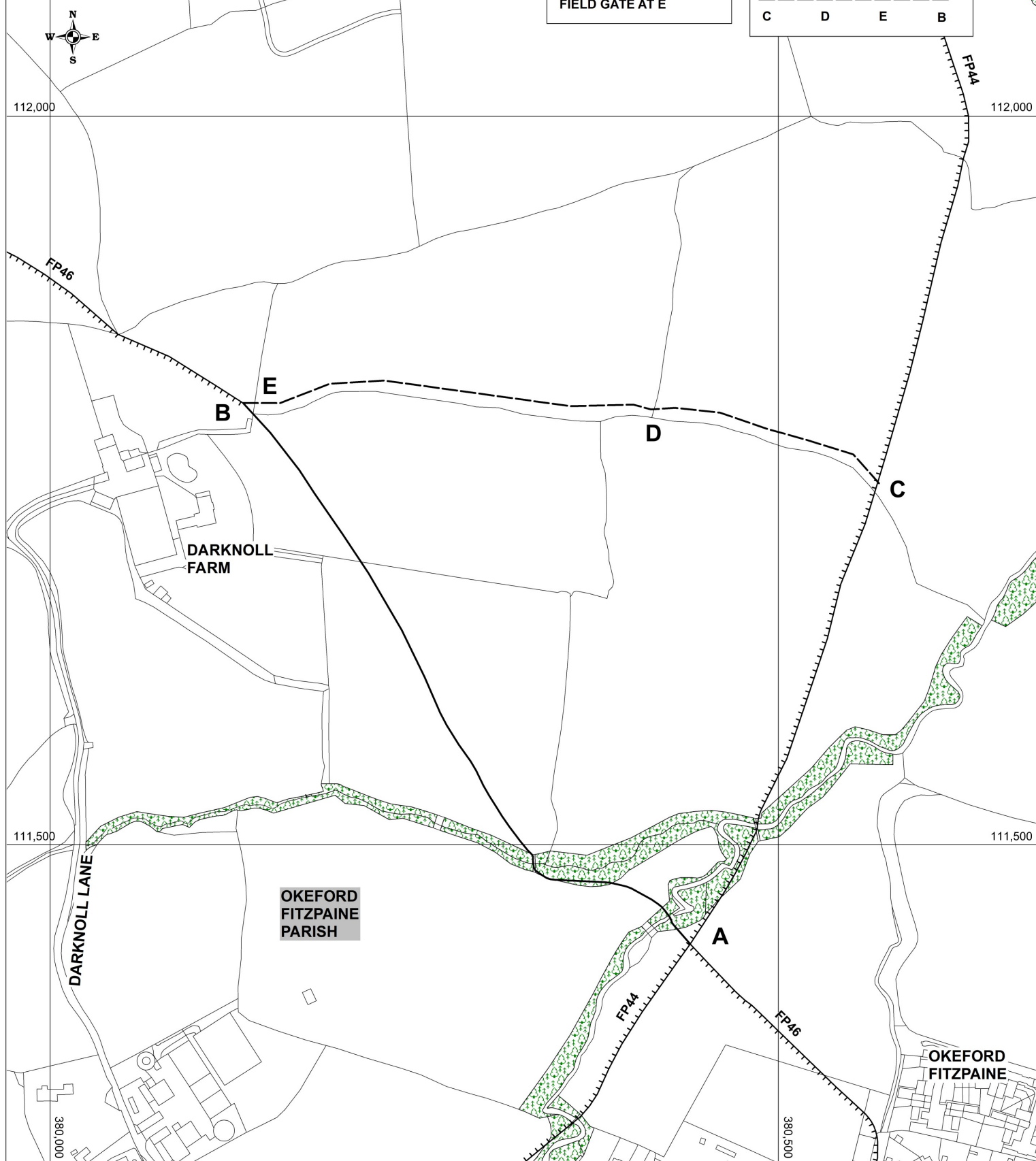
PROPOSED NEW ROUTE OF FP46

C

D

E

B



Highways Act 1980

APPLICATION TO DIVERT PART OF FOOTPATH 46, OKEFORD FITZPAINE AT DARKNOLL FARM
 (REVISED PROPOSAL)

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref:P256/25/1

Date: 18/03/2025

Drawn by:ASB

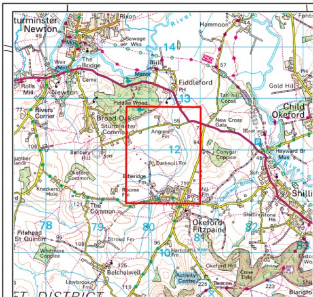
Scale:1:2500@A3

Cent X: 380,324

Cent Y: 111,751



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GRID REFERENCES:

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 B ST 8004 1185
 C ST 8062 1197
 D ST 8048 1197
 E ST 8043 1196
 F ST 8042 1196
 G ST 80159 11885
 H ST 80146 11885

PEDESTRIAN GATES AT
 E & F AND G & H

KEY:

UNAFFECTED FOOTPATHS

PART OF FP46 TO BE DIVERTED

A

B

PROPOSED NEW ROUTE OF FP46

C

D

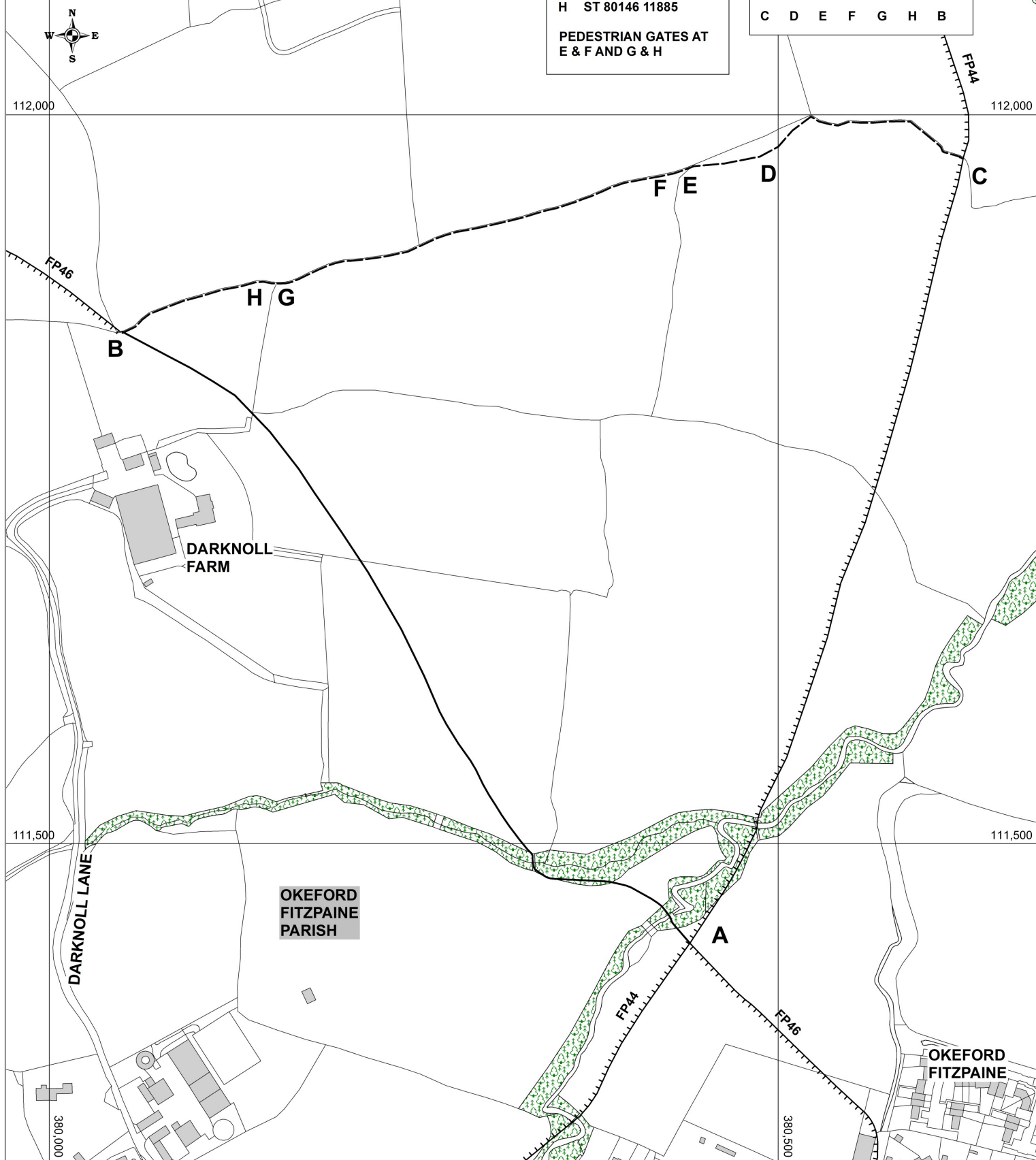
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G

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Highways Act 1980

APPLICATION TO DIVERT PART OF FOOTPATH 46, OKEFORD FITZPAINE AT DARKNOLL FARM

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: P256/24/1

Date: 21/02/2024

Drawn by: ASB

Scale: 1:2500@A3

Cent X: 380,324

Cent Y: 111,751



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Summary of original consultation responses

Opposing the proposal

Name	
(1)	Doubles distance, erases part of OF history.
(2)	Family used for 100 years, direct route
(3)	Hundreds of years, direct route, lovely route
(4)	Well used, popular, unique and pleasurable
Okeford Fitzpaine Parish Council	Diversion deemed inconvenient for the public and worsen the link to Darknoll Lane.
(5)	Ancient right of way should be left as it is

Supporting the proposal

(6)	Broadly supportive, suggests more thought needed
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Other responses

Claire Pinder, Dorset Council, Senior Archaeologist	With reference to your email/letter of 23 February, 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. Consequently, I do not feel that historic environment considerations constitute a constraint in the context of this proposal. Addendum: add a paragraph about the designated site and needing to consult Historic England
Historic England	Part of the old path (A- B) crossed the scheduled medieval village at Darknoll Farm (NHLE No 1002379) Where any works, such as the removal of the stile with replacement gate at Point B is proposed, Historic England will need to be consulted as the works may require scheduled monument consent
The Ramblers	We were first consulted about this proposal by way of a pre-application consultation (PAC) in June 2023, at which time I made a site visit accompanied by the applicant. Following e-mail exchanges and discussions, I subsequently responded stating that I had no objection to the proposed diversion. I made another site visit on March 30th and again walked the proposed route. Taking into account the fact that the work has yet to be carried out on the removal of sections of hedge, and installation of gates and culverts, I am satisfied that the route proposed will be both convenient and enjoyable.

Summary of revised consultation responses

Opposing the proposal

Name	
(1)	The diversion has not been shown to be necessary by the landowner The diversion makes the footpath longer and includes much steeper inclines that the current path making it less convenient , particularly for those less able. Routing the diversion against high hedge removes the view across open fields and detracts from the enjoyment gained on the existing path. In summary this diversion order seeks to solve a problem that does not exist and seeks to change a much used historic existing footpath, which has become much more important of late because of the access improvements made to Darknoll lane enable better and safer walking access to Sturminster Newton.

Supporting the proposal

(2)	No objection to the new proposed path - especially as their are new gates and clearances occurring. If the new path is more accessible I will use it more to connect to darknoll lane from the fields
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Other responses

The Ramblers	1. Whilst I have no objection to the proposed route generally, I am concerned about the access at point D. At the time of my visit the ground was very dry, but from experience, when there are narrow 'pinch-points' such as these (photos over), where it is lower than the fields on either side, in wet weather they quickly become churned up muddy patches. Has any consideration been given to making an access point to the north of the tree? However I do appreciate that this would mean the removal of some hedge, which would not be ideal. 2. I also noted a water trough along the route: if there are to be livestock in the fields then this will become a 'meeting point' for them, also resulting in a churned-up area. 3. Finally, is the existing field gate to remain at point E? We welcome the proposed width of the path at 2.5 meters, and the replacement of the stile north of point B with a gate, albeit that location is not on the diversion route.
Okeford Fitzpaine	Since my last email, the proposed footpath diversion route has now been amended by the landowner.

Parish Council	I just wanted to let you know, that while the PC does not particularly support this application it no longer objects to the moving of the path. The PC is happy with the new proposed route.
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Gradient Comparison

