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| **Order Decision** |
| Site visit made on 24 May 2022 |
| **by Andrew McGlone BSc MCD MRTPI**  |
|  **appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 1 June 2022** |

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| **Order Ref: ROW/3267379** |
| * This Order is made under Section 119 of the Highways Act 1980 (“the 1980 Act”) and is known as The Cheshire East Borough Council (Footpath No. 5 (Part) Parish of Adlington) Public Path Diversion Order 2018.
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| * The Order is dated 3 May 2018 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
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| * There was one objection outstanding when Cheshire East Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is proposed for confirmation subject to modification set out below in the Formal Decision.** |
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**Main Issues**

1. Section 119(6) of the Act involves three separate tests for an Order to be confirmed. These are:

TEST 1: whether it is expedient in the interests of the landowner, occupier or the public for the path to be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.

TEST 2: whether the proposed diversion is substantially less convenient to the public.

TEST 3: whether it is expedient to confirm the Order having regard to the effect which— (a) the diversion would have on public enjoyment of the path as a whole, (b) the coming into operation of the Order would have as respects other land served by the existing public right of way, and (c) 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.

1. In determining whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to enjoyment of the land affected by the new paths must be taken into account, where applicable. Regard must also be had to any material provision contained in a rights of way improvement plan for the area under section 119(6A). Other relevant factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation.

**Reasons**

*Whether it is expedient in the interests of the owner of the land that the path in question should be diverted*

1. The section of footpath to be diverted starts next to the eastern boundary of ‘The Hole’, a residential dwelling. The existing footpath then crosses a stile and passes through the garden of The Hole before crossing a stile and continuing along a surfaced track to Springbank Lane to point C. The track provides access to The Hole and Springbank Farm. It is used by vehicles, pedestrians and horses. Access to the track from Springbank Lane is gated at point C.
2. The current footpath route passes close to Springbank Farm and through the garden of The Hole which permits users of the footpath to see into the former’s house and traverse through the latter’s private garden. I understand that there is a record of burglaries at The Hole. By diverting the footpath, it would move the footpath further away from the two properties. Furthermore, given the stables at Springbank Farm, the proposed diversion would reduce the risk of the existing gate at Springbank Farm being left open, thereby avoiding potential conflict between horses and members of the public.
3. Although the owners of Springbank Farm may have been aware of the footpath’s existing route when they purchased the property, this does not alter my view about the expediency of diverting the footpath in the interests of the landowners for the privacy and security reasons set out.

*Whether any new termination point is substantially as convenient to the public*

1. The proposed diversion would start from point A, but it’s termination at point C on Springbank Lane would change to point E. Consequently, users of the footpath would need to use the lane from point E to join public footpath No. 43 to the south of the lane. The proposed diversion would be around 37 metres shorter than the existing route. However, it would add roughly 47 metres to journeys if users’ approach from Middlewood Way due to the need to use a short section of the lane. But conversely, it would mean the route is around 240 metres shorter if users’ approach from the Macclesfield Canal. The gradients of both routes are similar, and users would, despite the increase or decrease in the length of the diverted route, be able to enjoy the convenience of moving along footpath No. 5 which would continue to act as a conduit between the wider right of way network.

*Whether the new path will not be substantially less convenient to the public*

1. The path is typically used for recreational purposes, given that it links to the wider public right of way network which allows for longer journeys. The proposed diversion would have a width of not less than 2.5 metres on a stoned surface. It would be easy to follow, and provide a direct line of sight along the new route before or after point D.
2. The diverted route would mean that users would not need to use two stiles, though they would still need to use a stile and a gate. Users would need to use a relatively straight section of the lane for around 80 metres, but the road is not heavily trafficked and is reportedly well used by walkers as a link between the Macclesfield Canal and Middlewood Way. The lane doesn’t form part of the right of way network, but there are grass verges along the lane that allow people to step off the road to avoid conflict with vehicles.
3. There is likely to be a reduced journey time for users once they are on the diverted route, and regardless of whether they access the route to or from Middlewood Way or the canal, there would be a modest difference in journey time between the existing and proposed route.
4. A short section between a stile and point A crosses a paddock. Compared to the existing route past The Hole, it would be less convenient to some users owing to its undulation, however the existing path beyond point A is undulating, on a mixed surface and very narrow as it passed into a woodland. This part of the footpath would be unaffected by the Order. Thus, there would also not be any extra difficulty created for users and therefore, for the other reasons that I have set out, I consider that the proposed route would not in overall terms be substantially less convenient to the public if it were diverted.

*The effect of the diversion on public enjoyment of the path as a whole*

1. The existing route is part of a network of public rights of way extending across the countryside. They provide opportunity for shorter and longer walks taking in the rural landscape.
2. The proposed route would divert from the existing route but it would still have similar views of the rural landscape, and a similar general direction of travel. That said, for users to carry out their journeys safely along the lane they would need to be aware of vehicles and may need to rely on the grass verges along the lane to avoid conflict. This could affect users’ overall enjoyment of the route even though the lane doesn’t form part of the right of way. Even so, the lane already provides a link between the canal and Middlewood Way and vehicle numbers do not seem to be particularly high. The road also offers good forward visibility and there were not any accidents between 2012 and 2017. Regardless, the road has a rural character, so whilst users’ enjoyment of the proposed route and its surroundings would be different in this respect, I do not consider that those who seek pleasure from informal recreation on footpaths such as these would be diminished due to the Order.

*The effect of the diversion on other land served by the existing paths and the land over which the new paths would be created*

1. There is nothing to suggest that the proposed diversion will have any adverse effect on land served by the existing route or on the land over which the diverted route would be created as they are both within the same ownership.

*Rights of Way Improvement Plan*

1. No contradictory view has been expressed to that of the Order Making Authority that the Council’s ROWIP has been taken into consideration when preparing the proposed diversion. There is also no evidence to suggest that the proposed diversion would conflict with the ROWIP.

***Conclusions on whether it is expedient to confirm the Order***

1. I have concluded that it is expedient in the interests of the landowners to divert the path, and that the resulting diversion will not be substantially less convenient to the public. The proposed route is likely to be as enjoyable to use for most people, and there would be no adverse impact upon the land currently served by the footpaths or the land which the diverted path would cross. I am satisfied that it is expedient to confirm the Order.

**Overall Conclusion**

1. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed with a modification to the wording of the Order. The modification proposed by the OMA has the effect of tidying the Order and so there is no need to advertise the modification.

**Formal Decision**

1. The OMA has suggested a minor modification to the wording of the Order. I propose to confirm the Order subject to that modification:
* *“This Order is made by Cheshire East Borough Council ("the Authority") under Section 119 of the Highways Act 1980 ("the 1980 Act") because it appears to the Authority that in the interests of the landowner of the land crossed by the footpath, it is expedient that the line of the path described in Paragraph 1 of this Order should be diverted.”*

Andrew McGlone

INSPECTOR

