
Order Decision

Inquiry held on 4 and 5 February 2020

Site visit made on 16 March 2020

by Paul Freer BA(Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 18 May 2020

Order Ref: ROW/3223018

- 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 12 (part) Parish of Goostrey) Public Path Diversion Order 2016.
- The Order was sealed on 17 November 2016 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when Cheshire East Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Preliminary matters

1. One of the objections to the Order, made by Mr Dyke, complains that the process by which the Order Making Authority (OMA) made the Order was flawed, and that the decision was based on incomplete and incorrect evidence. The decision-making process leading up to the making of the Order is not a matter before me and I have therefore not considered the point further.
2. As the Inquiry progressed, a number of alternatives were put forward by objectors but these are not for my consideration. I am only to consider the Order with any proposed modification.
3. The Open Spaces Society did not call any witnesses at the Inquiry, although both the OMA and Applicant did so. The latter were cross-examined by a representative of the Open Spaces Society. I have given the evidence the appropriate weight.
4. In addition to the accompanied site visit held on 16 March 2020, I spent a considerable amount of time walking the route on the day before the Inquiry opened.

Equality Act 2010

5. The position of the Open Spaces Society, as it developed at the Inquiry, was that the OMA had failed to discharge its duty under the Equality Act 2010 (the 2010 Act), in terms of not having regard to an appropriate assessment in relation to the impact of the diversion on those with disabilities. In giving her evidence at the Inquiry, Mrs Nixon confirmed that the OMA had relied upon an audit prepared on behalf of the applicant by Mr Chambers, who operates a consultancy service specialising in access to the countryside with people with disabilities. The point made by the Open Spaces Society was that the audit

prepared by Mr Chambers focused almost exclusively on access by wheelchair users and failed to consider those with other forms of disability. The view of the Open Spaces Society is that this omission made the audit defective, such that the OMA had failed to discharge its duties under the 2010 Act.

6. I concur with the Open Spaces Society insofar as the audit prepared by Mr Chambers does focus almost exclusively on access for wheelchair users. For that reason, I accept that it does not properly consider access by people with other forms of disability, including the visually impaired and those with certain types of mental health issues. To that extent, I accept that the audit relied upon by the OMA could be considered not to be comprehensive.
7. That said, because the Order has now been submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, the latter becomes the decision maker. In these circumstances, it then becomes incumbent upon me to consider the effect of the Order on all sections of the community under the Public Sector Equality Duty set out at section 149 of the 2010 Act. In doing so, I have specifically turned my mind to the impact of all those who have disabilities of any kind, together with all other sections of the community. I am satisfied that I have enough information before me to discharge that duty, including from my site visit. Consequently, any omissions in the audit relied on by the OMA have been addressed.

Modifications to the Order

8. The OMA has requested that I make two modifications to the Order as drafted. The first modification proposed is to modify the description of the route to reflect the 4.7m width at point D on the Order plan. The second modification proposed is change the limitations and conditions to refer, in summary, to one pedestrian gate and one kissing gate of 1.4 m width to an appropriate standard.
9. In considering the Order, I have had regard to the proposed modifications. The Order, if confirmed, will be modified accordingly.

Main Issues

10. The Order has been made in the interests of the owners of the land crossed by the public rights of way. Section 119 of the Highways Act 1980 therefore requires that, before confirming the Order, I must be satisfied that:
 - (a) it is expedient in the interests of the owners of the land crossed by the section of footpath to be diverted that the line of the path or way, or part of that line should be diverted; and
 - (b) the path or way will not be substantially less convenient to the public;
 - (c) the point of termination of the alternative path and/or way would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public, and
 - (d) that it is expedient to confirm the Order having regard to:
 - (i) the effect which the diversion would have on public enjoyment of the path or way as a whole; and

(ii) the effect which the coming into operation of the Order would have as respects other land served by the existing rights of way; and

(iii) the effect which any new public rights 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.

11. Section 119(6A) of the 1980 Act provides that I must have regard to any material provision contained in a Rights of Way Improvement Plan for the area covered by the Order.

Reasons

Background information

12. This case involves the proposed diversion of a section of footpath Goostrey FP12, which runs between Booth Bed Lane and Mill Lane, to the north of Goostrey. At present, the footpath passes through the collection of buildings at Swannick Hall, before turning generally south-east towards Mill Lane. The footpath then crosses "The Boardwalk". This boardwalk over soggy ground was constructed by the Goostrey Footpath Group to mark the Millennium, funded in part Cheshire County Council. The new path, created by the applicant for this Order as a permissive path in or around 2015, avoids both Swannick Hall and "The Boardwalk", and crosses Shear Brook by means of a specially created footbridge.

Whether it is expedient in the interests of the owners that the line of the path or way, or part of that line should be diverted

13. The land crossed by the path is in the ownership of the applicant for the Order, Mr Dick, and that of a neighbouring landowner, Mr J Griffiths of Byley Hall Farm. I shall consider the interests of these two landowners in turn.
14. The applicant's case in terms of expediency was initially put in terms of the diversion of the footpath increasing the *perception* of both the privacy and security of the property (my emphasis). However, as presented in later evidence and at the Inquiry itself, it emerged that the view held by Mr and Mrs Dick is that diverting the footpath would increase their privacy and security in actual terms. As Mr Dick phrased it in his evidence, diverting the footpath "would turn what amounts to a public area into a private one".
15. I accept that users of the path have a clear view of the front garden of Swannick Hall as well as the area between the farmhouse and the barns. I also accept that users of the path are able to see into the habitable rooms in the front of the property albeit little of the interior of the house is visible by someone casually walking the footpath. I therefore consider that diverting the path would result in an actual increase in privacy to the occupiers of Swannick Hall.
16. Whilst clearly a concern held by Mr and Mrs Dick, I heard no evidence to show that there was an existing problem with security. I recognise that Swannick Hall is in an isolated position and in that sense potentially vulnerable to crime. However, I was presented with no evidence to show that the presence of the footpath has made Swannick Hall any more vulnerable than other isolated rural properties. In the absence of that evidence, I am not persuaded that diverting the footpath would result in an actual improvement in the security of the

property but acknowledge that this would be perceived as such by the occupiers.

17. In both of those contexts, a benefit would accrue to Mr and Mrs Dick and this would be in their interest. It follows that it would be expedient in the interests of the owners of the land crossed by this section of footpath that the line of the footpath should be diverted.
18. In reaching that conclusion, I am mindful that Mr and Mrs Dick were patently aware of the presence of the footpath in front of the house when they purchased it. The courts have held that in such circumstances there is no statutory bar to a person making an application for the path to be diverted¹, and their knowledge of the situation at the time of purchasing the property has had no bearing on my conclusion in relation to expediency in the interests of the landowner.
19. The applicant also raises a point in relation to conflict between vehicles and pedestrians on the access to Swannick Hall. The point is made in relation to public safety such that, in the applicant's view, it would for that reason be in the public interest to divert the footpath.
20. This perceived conflict is claimed to occur where the access narrows at the bridge over Shear Brook. The pinch-point created prompted Mr Dick to install a 'traffic-light' system at a point close to where vehicles emerge from Swannick Hall and/or the equestrian centre located immediately adjoining it. In cross-examination, Mr Dick estimated that there were possibly between 10 to 30 vehicular movement per day, although he fairly accepted that this was an estimate based on the number of horses kept at the equestrian centre and that he had not counted the actual number of vehicular movements. Neither had he counted the number of pedestrians using this section of the route.
21. I acknowledge that there is not much room at the pinch-point for a large vehicle to safely pass a pedestrian encountered there. There is, however, good visibility at that point and approaching vehicles can be seen in plenty of time. Even on Mr Dick's highest estimate, there are likely to be only about 4 movements in any one hour, assuming a standard working day. That amounts to one movement every fifteen minutes or so, or less if the working day is extended. I recognise that movements may not be evenly spaced over any given day but, even so, I am not convinced that there is a significant risk to users of the path given the visibility of approaching vehicles that is available. For that reason, any pedestrian/vehicular conflict that might rise would be easily avoided and the actual risk to public safety would be minimal, such that any public interest arising from the diversion of the footpath in this respect would not be significant.
22. In relation to the land owned by Mr Griffiths, the diversion of the path would reduce the length of public right of way that crosses his land. This would reduce his responsibilities in terms of reinstatement, and could potentially increase the value of his land. I accept that diverting the path would be in his interests but, as Mr Carr concedes, the aforementioned benefits may not be particularly significant.

¹ *Ramblers Association v SSEFRA and Oxfordshire County Council* [2012] EWHC 3333 (Admin)

23. In conclusion on this issue, I conclude that it would be expedient in the interest of both landowners to divert the footpath. However, in my view, the reasons that underly those interests are not particularly strong ones.

Whether the path or way will not be substantially less convenient to the public

24. I accept that some local residents may use footpath Goostrey FP12 to reach local services. Nevertheless, on the evidence before me, it appears that the footpath proposed to be diverted is used primarily for recreational purposes rather than to reach a specific point.
25. According to the distances set out in the Order itself, the section of the existing footpath to be diverted amounts to 260 metres in total. The total length of the new path described in the Order amounts to 321 metres, an increase of some 61 metres.
26. As part of his evidence, Mr Carr calculates that this additional length would result in an increased journey time for the diversion of some 45 seconds. This is in the context of, according to Mr Carr's calculations, a total journey time of just over 11 minutes for footpath Goostrey FP12 in its entirety. These times are based on a walking speed of 3mph, itself based on the Naismith's Rule.
27. Those calculations are challenged by Mr Meewezen, who considers that walking speeds of 2mph or 1.5mph are more typical. I recognise that the walking speeds of various individuals will vary considerably, according to factors such as age, fitness and the purpose of the walk. The gradients on the new path will also be factor. I am nevertheless satisfied that the walking speed of 3mph applied by Mr Carr is reasonably representative and that his calculations can be relied upon.
28. In the context of footpath Goostrey FP12 as whole, I do not consider that the proposed diversion would be substantially less convenient than the existing footpath in terms of the additional distance or time involved.
29. In this case, the main issues in relation to the convenience relate to the different characteristics of the existing footpath to be diverted and the new footpath. There are three main factors to be considered: gradient, surface and limitations. At the Inquiry, I heard evidence from Mr Chambers, himself a wheelchair user, about the use of the path by people with disabilities. Given the way in which this evidence was presented, both in written form and at the Inquiry, it is convenient to consider these factors from the perspective of users who have disabilities and those who do not separately in the first instance, before bringing them together to reach an overall conclusion.
30. In relation to gradient, the existing footpath to be diverted is essentially level, with little change in gradient. Such minor changes in gradient as exist do not, in my view, present any appreciable difficulty to any user of the path who does not have a disability and as such are of no material consequence.
31. By contrast, the new path features sections of gradient either side of where it crosses Shear Brook. The first of these sections is from point D on the Order map to where the path drops down to Shear Brook to the footbridge at point E. At this point, the path takes the form of an S-bend in order to reduce the gradient. The applicant records the gradient of this section as between 1.8 and 1.11. The second section ascends/descends to/from point E in a straight line

- to point C where, according to the applicant, the gradient is between 1.8 and 1.9.
32. There is some dispute about the exact gradient of these sections. The Open Spaces Society records the gradients as between 1.5 and 1.7, and therefore steeper than the applicant suggests. The applicant, through his representative Mr Chambers, explained how these gradients were measured. This evidence was subject to cross-examination by the Open Spaces Society and, in my view, held up to that examination. For that reason, the evidence of the applicant in relation to gradients is to be preferred.
33. In my view, although relatively steep, a person with no disabilities and of average fitness would have little difficulty in tackling these gradients. However, for others, both of these sections of the new path could present more of a challenge. In particular, the elderly, those with breathing difficulties and/or other medical conditions, and those who require walking aids might find the gradients in these sections uncomfortable. I can also understand that some might be dissuaded from using the new path because of these sections of gradient, notwithstanding the overall length of Goostrey FP12.
34. In terms of surface, the path to be diverted passes over a variety of surface types, including grass and loose gravel (the latter only in the space between the farmhouse and barns). Although the grass surface is somewhat uneven in places, I consider that this surface causes no particular difficulties for those without disabilities. The loose gravel, or pea gravel as the applicant terms it, was laid in November 2015. Again, whilst not particularly pleasant to walk on, I am satisfied that this surface causes no particular difficulties for those without disabilities.
35. There was some dispute at the Inquiry over the surface of the new path. I am however satisfied that the surface is rolled and compacted gritstone, which I understand to be the intended surface should the Order be confirmed². There are, I accept, areas where parts the surface has broken up and some loose stones are present. One such area is the inclined section just after point E. Nevertheless, I am satisfied that the vast majority of the new path offers a compact surface that is comfortable to walk on.
36. In terms of limitations and obstacles, the path to be diverted features two pedestrian gates at the exit to the farmyard. Having passed through these pedestrian gates, the user of the path travelling south-east then encounters "The Boardwalk". The surface of this boardwalk appears to have been covered in non-slip material at some point, but this has now largely eroded. Although clear at the time of my site visits, I have been provided with photographic evidence that shows that the boardwalk is prone to be covered by leaf litter. I therefore accept that the boardwalk is likely to become slippery in certain weather conditions and at certain times of the year. Nevertheless, I consider that the boardwalk is easily passable by users without disabilities at most times of the year.
37. I turn now to use of the path by those with disabilities. At the Inquiry, I heard evidence on this matter from Mr Chambers. However, before considering that evidence, it is first necessary to consider a matter raised by Mr Chambers in a

² Had I been minded to confirm the Order, I would have specified a date on which the new route would come into effect.

report dated 6 April 2016 and subsequently expanded upon in giving his evidence to the Inquiry.

38. In his report, Mr Chambers begins his assessment by seeking to determine the 'Countryside Setting'. He does this through a scoring system, in which various features are scored according to specific criteria. My difficulty with that approach is that, despite seeking clarification at the Inquiry, I am unable to reconcile the scores awarded by Mr Chambers in his report with the scores required to determine the appropriate countryside setting. Moreover, whilst I am asked to read Mr Chamber's Proof of Evidence alongside his report of April 2016, I can find no clear conclusion in either his Proof of Evidence or the report of April 2016 in terms of Countryside Setting of the path, or what implications flow from that. Accordingly, I propose to attach very limited weight to the matter of Countryside Setting and to focus instead on the 'Countryside for All' standard that Mr Chambers relies upon in his Proof of Evidence.
39. In his main Proof of Evidence, the approach adopted by Mr Chambers is to compare the new path with the path to be diverted from the perspective of the wheelchair user. I will adopt that approach here.
40. In terms of the path to be diverted, Mr Chambers firstly considers that the section of the path where it passes between the main house, barns and outbuildings presents safety implications on the basis that the space is shared by vehicles. Specifically, Mr Chambers points to difficulties that may be encountered by wheelchair users and those with sensory impairments should they not be able to react quickly enough if confronted vehicles. However, Mr Dick was clear in his evidence that the majority of vehicles servicing the equestrian use deliver and/or load to the rear of outbuildings. I therefore consider that the potential for conflict within this space is not significant.
41. The area referred to above is also that covered in pea gravel in November 2015. The loose nature of this surface is, in my view, likely to be somewhat disconcerting to those using a wheelchair and/or visually impaired. However, whilst this surface might impede progress by those users, it does not prevent them from using it.
42. The second main point raised by Mr Chambers in relation to the path to be diverted is, however, in my view more significant. This relates to the two pedestrian gates at the exit to the farmyard. These gates are in close proximity to each other and I accept are difficult to negotiate, particularly for wheelchair users.
43. Similarly, the section of the path encountered immediately after these gates has some surface undulations due, it seems to me, in large part by horses crossing it to reach adjoining paddocks. Nevertheless, I accept that this section of the path is difficult to negotiate for those in a wheelchair and those with sensory impairment.
44. A user of the path to be diverted then encounters "The Boardwalk". As Mr Chambers points out, the design of the boardwalk presents an obstacle to wheelchair users. There are two aspects of the design that cause this.

45. The first is a step at the north-western end. Although only a small step, I accept that this would be difficult for wheelchair users to negotiate. It also constitutes a trip hazard for those with sensory impairments.
46. The second element is the gate at the other end, which Mr Chambers describes as a "an absolute physical barrier" to most wheelchair and mobility scooter users. I accept entirely that the box hurdle has been installed with, as Mr Chambers terms it, "insufficient space to permit a convenient turning space". I also accept that negotiating this box hurdle would be problematic and inconvenient for wheelchair and mobility scooter users but, given the absence of further rails beneath the main handrail (at the time of site visit), not entirely impossible. Indeed, Mr Chambers' use of the word "convenient" in this context suggests as much.
47. Finally in respect of this boardwalk, Mr Chambers suggests that the wooden handrails are so rough or abrasive so as to prevent the visually impaired from being able to grip them. I do not accept this is to be the case, but do acknowledge that the accumulation of leaf litter on the boardwalk could present a hazard to those with sensory impairments, particularly when wet.
48. In summary, I recognise that the combination of the surface and the obstacles present difficulties for wheelchair users and those with sensory impairments seeking to use the path to be diverted. I take the point made by Mr Chambers that the combination of the boardwalk and the gates are likely to detract from the pleasure of the journey experienced by wheelchair users and those with sensory impairments. I also accept that these obstacles could dissuade those groups from using the path to be diverted.
49. The new path is not without difficulties for those same groups. In particular, unlike the path to be diverted, in places the steepness of the gradient exceeds the Countryside for All Standard. In this respect, Mr Chambers relies upon the 'Least Restricted Option' and that, given the re-grading that has taken place at the steepest points, the gradients now existing should be regarded to be as good as is reasonably practicable. I accept entirely that this is the case but the corollary is that the new path may not be accessible for all wheelchair users.
50. On his own admission, Mr Chambers is an experienced wheelchair user. He also has the benefit of a commercially available adaptation for his wheelchair which, from his demonstration, appears to me to significantly improve the manoeuvrability of his wheelchair. I am mindful that not all wheelchair users are as experienced as Mr Chambers and/or have the ability to similarly adapt their wheelchairs. In their case, it seems to me that the gradients on the new path would present significantly more of a challenge than they do for Mr Chambers, such that the opportunity for them to use the new path may be more limited: indeed, Mr Chambers acknowledges that the gradients on this section of the new path may preclude manual wheelchair users.
51. Moreover, and again unlike the path to be diverted, the steepness of the gradients on the new path is likely to make use difficult by those who are not wheelchair users but who have other forms of disability, including visual impairment and mental health/anxiety issues.
52. Neither is the new path barrier free: there are new gates to be negotiated at points A and C (the latter, in due course, potentially a kissing gate specifically designed to be suitable for wheelchair users). It therefore seems to me that

the new path is more convenient in some respects, whilst introducing features (i.e gradients) that are not present in the path to be diverted and which are not convenient.

53. Consequently, whilst I accept Mr Chamber's conclusion that the new path is overall the more suitable route from an accessibility perspective, I am not persuaded that it is significantly so. There is, therefore, a benefit in terms of equality of opportunity to use the route arising from the new path. But I must the balance that against my assessment that the new path is less convenient for those who do not have a disability and who are likely to form the majority of users of the path.
54. The bar set in section 119(6) of the 1980 Act is a high one: the new path or way will not be *substantially* less convenient to the public (my emphasis). Having regard to all of the points rehearsed above, when taken in the round, I consider that the new path is marginally more convenient than the path to be diverted. The corollary is that the proposed diversion would not be substantially less convenient than the existing path.

The effect which the diversion would have on public enjoyment of the path or way as a whole

55. As described above, the footpath proposed to be diverted passes in front of Swannick Hall, a Grade II listed building. The listing description for Swannick Hall indicates, amongst other things, that the building is a farmhouse of late C17 origins but of late C19 appearance.
56. In the evidence before me, the listing description is set out in a Heritage Assessment dated January 2015 submitted in support of a planning application to extend Swannick Hall. The Heritage Assessment identifies three elements to the Swannick Hall site. The first of these is Swannick Hall itself. The second is the southern brick barn, which the Heritage Assessment considers probably dates to the early C19. The third element is the northern barn, which the Heritage Assessment considers probably dates to the mid C19. The Heritage Assessment concludes that the significance of Swannick Hall derives principally from its origins as an C17 farmhouse subsequently re-clad in brick but also considers that this significance is enhanced by the group value Swannick Hall shares with its barns, and by the isolated farmstead setting in which *all the buildings* are experienced (my emphasis).
57. I note that the 'well' to the front Swannick Hall is neither included in the listing description, nor referred to in the Heritage Assessment. There was some dispute at the Inquiry as to whether this feature is a well or a drain. Given that it is not specifically mentioned in relation to the significance of Swannick Hall as designated heritage asset, I attach very little importance to this feature irrespective of its true function.
58. I am of course mindful that many of the users of the footpath, perhaps even the majority, may not be aware of or attach particular value to the architectural and/or historic interest of Swannick Hall. I also recognise that very few users of the footpath, if any at all, would have read the listing description for Swannick Hall or the commentary set out in the Heritage Assessment. However, that does not in any way diminish the enjoyment this listed building likely gives to users of the Order route. Those with an interest in such matters would gain enjoyment from viewing the specific external

features of the building that warrant its status as a listed building. Those with no particular knowledge of or interest in architecture or architectural history would gain enjoyment from appreciating what is evidently a historic farmhouse. That enjoyment can only be derived from viewing the front elevation of Swannick Hall, the rear of the building having been extensively modified over time.

59. Furthermore, the footpath to be diverted is the only location from which the juxtaposition of Swannick Hall and its two barns can be properly appreciated. I acknowledge that glimpsed views of the southern barn are possible from points along footpath Goostrey FP12 to the west of point A on the Order map. Even then, views in which the southern elevation of the barn and the front elevation of the farmhouse are seen together are best achieved from points along the footpath east of Point A. Similarly, I acknowledge that views of the southern barn are possible from various points between A and D on the new path. However, the front elevation of the farmhouse is not visible in those views. Views of the northern barn are visible from positions on the new path in the vicinity of Point C on the Order map, but again the front elevation of the farmhouse is not visible in those views. Furthermore, only the upper part of the northern barn is visible in those views and only then at a distance.
60. The Heritage Assessment points out that the significance of Swannick Hall is enhanced by the group value it shares with its barns, and by the isolated farmstead setting in which *all the buildings* are experienced. I take the reference to "all the buildings" in this context to mean Swannick Hall, the two barns and the L-shaped single-storey building attached to the northern barn. In conjunction with the southern barn, the latter forms a courtyard which, in addition to forming part of the group value of these buildings, also speaks to the historic use as a working farmyard (albeit I recognise that any such use has now ceased).
61. The group value of Swannick Hall, its two barns and courtyard can only be properly appreciated from directly in front of the farmhouse. That is the only point from which these buildings can be viewed together and their historic relationship fully understood.
62. This is important because the origins of this group of buildings as a working farm would be apparent even to those users of the footpath with no particular knowledge of architecture or architectural history. The juxtaposition of these buildings is therefore of a wider interest to a greater number of people using the footpath, and who would gain enjoyment from appreciating what was evidently once a working farm. Again, that enjoyment can only be derived from positions on the footpath to be diverted.
63. This is a point picked up the Inspector in reporting on a Public Inquiry into an appeal against the refusal of Cheshire East Council to grant outline planning permission for the residential development of land broadly to the south of the Order route (APP/R0660/W/15/3129954). At paragraph 284 of his report, the Inspector observes that "The Hall and nearby outbuildings, although now in equine use, read as a farm group³. These buildings are evidence of how the site evolved and of its use as a 'farmstead', as is the undeveloped, open character of much of the surrounding land and the access drive to the Hall from the majority of which that undeveloped openness is readily apparent." The

³ For the avoidance of doubt, reference to 'The Hall' in this report is a reference to Swannick Hall.

Inspector's clear reading of the buildings as a farm group, together with his appreciation of the contribution they make to our understanding of the evolution and use of the farmstead, reinforces my own conclusions in those respects. In dismissing the appeal, the Secretary of State agreed with the Inspector's findings in these respects.

64. Furthermore, the impression of being in an isolated farm setting is also much more pronounced from within the 'farmyard' in front of Swannick Hall than from the new path. It follows that the agricultural association of Swannick Hall and the farm group as a whole is better appreciated from the path to be diverted than the new path. Again, this impression is likely to be appreciated and enjoyed by those with no particular knowledge of architecture or architectural history.
65. To summarise on this point, as a Grade II Listed Building, Swannick Hall is a main feature of the Order route and can only be fully appreciated from the footpath to be diverted. That is a matter to which I attach great weight. I am aware that some users of the footpath are content to view Swannick Hall from other perspectives, a view that is also held by Goostrey Parish Council. I am also aware that there are places nearby that offer experience of a working farm in a historic setting: the applicant refers to me Tatton Farm, part of the Tatton Park estate, as one example. However, the special architectural and/or historic interest of any listed building is unique, as is the setting. For that reason, the presence of other, albeit similar, examples is not a sound reason to deny the public the unique opportunity of enjoying Swannick Hall in its proper context. Consequently, whilst I have taken the opinions of others into account, they do not alter the conclusion that I have reached on this point.
66. During my site visits, I noted that the Lovell Telescope at Joddrell Bank, itself a Grade I listed building, is visible from the path to be diverted. The Lovell Telescope is a feature of interest in the landscape and I therefore paid particular attention to the positions from which it is visible. I noted that views of the Lovell Telescope may be obtained from both the path to be diverted and the new path, but that possibly the best views are obtained from various positions on those sections of footpath Goostrey FP12 that are not subject to the proposed diversion. In relation to the enjoyment of the path, I therefore consider the proposed diversion to have a neutral effect in this respect.
67. In relation to the enjoyment of the new path, I recognise that this has the benefit of providing a pleasant, tranquil and close-up experience of Shear Brook and the immediately surrounding environment. I do not underestimate the enjoyment to be gained from sitting quietly by the footbridge over the stream, taking advantage of the seating that has been provided there to enjoy the wildlife and flowers, or in allowing dogs to play in the water. I also take the point made by Goostrey Parish Council in terms of the tree planting that has taken place there by young people from the village.
68. Those benefits must, however, be considered in context. The environment surrounding Shear Brook is not entirely a natural one: it has a managed, well maintained, semi-domestic and garden-like feel to it, not dissimilar to parkland in character but on a much smaller scale. I note that the Inspector for the above appeal (APP/R0660/W/15/3129954) made a similar observation⁴. The semi-domestic feel of this area might not be a cause for concern for some but,

⁴ Paragraph 282 of the Inspector's report.

- in my view, the stark contrast between this semi-domestic, garden-like area and the surrounding rural landscape does detract from the enjoyment of the new path.
69. Bearing that in mind, it is instructive to compare that with the view of Shear Brook obtained from the path to be diverted. Views of Shear Brook and the area described above are obtained from the bridge on the access to Swannick Hall. Two points flow from this.
70. Firstly, it follows from the above that the new path is not the only way in which views of Shear Brook can be obtained: the new path is therefore not unique in that respect, albeit the nature of the views is of course different. Indeed, views from the bridge have the benefit of offering views of Shear Brook both upstream and downstream that are not available from the new path. Secondly, the views from the path to be diverted do not betray as much of the 'managed' landscape as does being close-up to it on the new path. Views from the former are dominated by the trees that line the stream, rather than the low-level features that contribute to the 'parkland' feel of the latter. To my mind, views from the path to be diverted sit more comfortably in the context of a longer walk amongst the surrounding rural landscape offered by footpath Goostrey FP12, and are more enjoyable for that.
71. Associated with this last point is the wider way in which the new path is experienced. The new path runs closer to the suburban fringe of Goostrey than does the path to be diverted. As a consequence, the rear elevation of the houses, the boundary fencing and other domestic paraphernalia are all more noticeable from the new path than from the path to be diverted. In my view, one of the principal attractions of footpath Goostrey FP12 is that it offers a walk through a working rural landscape. By increasing the visual prominence of the suburban character of Goostrey itself, the new path detracts from that experience and is less enjoyable as a result.
72. There is, in addition to the above, the enjoyment to be derived from walking/using the wider and compacted surfaces of the new path compared to over muddy and/or disturbed ground of the route to be diverted. In that respect, this case is somewhat unusual in that the new path has existed as a permissive path since 2015, and was subsequently improved in line with recommendations made by Mr Chambers in or around 2017. In his evidence, Mr Carr asserts that "The public are effectively voting with their feet and using the proposed new path...in preference to the existing legal line of the footpath." This is supported by the evidence of Mr Dick, who confirms that he rarely sees anyone using the current line of the footpath.
73. There is some physical evidence from the wear of the surface around point C that users prefer the new path. I also have no doubt that Mr Dick, as resident of Swannick Hall, is in the best position to observe use of the path and speak to people who are using it. I accept that the logical conclusion from the above is that people are using the permitted path because they derive more enjoyment from it. However, the evidence of both Mr Carr and Mr Dick in this regard is anecdotal, and is not supported by statistical data. Consequently, whilst I am satisfied that many do prefer the new path, I do not know the precise breakdown in terms of those who prefer the new path against those of prefer the path to be diverted. Neither does the evidence before me offer any clues as to why they might prefer the new path: do they enjoy it more, or do

they simply find it more convenient? This lack of detail in the evidence reduces the weight that I can attach to it.

74. Moreover, the evidence before me is divided on this point. Mr Williamson clearly supports the proposed diversion, indicating that he much prefers to go around farmyards rather than through them. Dr Morris, speaking on behalf of Goostrey Parish Council, comments that diverting the footpath removes the sense of intrusion that might discourage walkers from fully utilising the existing path as it passes close to the residential property of Swannick Hall. On the other hand, it is clear from the written submission made by Mr Dyke and Mr Meewezen, the latter speaking on behalf of the Open Spaces Society, that they derive enjoyment from passing through the farmyard setting and viewing the listed building.
75. Having regard to all these factors, and taken in the round, I do not consider that the new path and the path to be diverted are as enjoyable as each other, such that the 50:50 test advanced by the applicant is met. In my view, the path to be diverted is on the whole more enjoyable than the new path, principally because of the opportunity to view the listed building in its full context but also because the path to be diverted provides a better experience of the working rural landscape. In accordance with section 119(6)(a) of the 1980 Act, I make that assessment based on the entire length of footpath Goostrey FP12 from Booth Bed Lane to Mill Lane. On that basis, I conclude that the diversion would have an adverse impact on the enjoyment of the route as a whole.

The effect which the coming into operation of the Order would have as respects other land served by the existing right of way

76. There are no effects on other land served by the existing right of way.

The effect which 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

77. The landowner is also the applicant and clearly supports the diversion.

Whether the point of termination of the alternative path would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public

78. The point of termination of the alternative path would be on footpath Goostrey FP12, and in that respect would be substantially as convenient to the public.

Rights of Way Improvement Plan

79. The proposed diversion does not affect any objectives or proposals in the Rights of Way Improvement Plan for Cheshire East Borough Council.

Whether it is expedient to confirm the Order

80. To determine whether it would be expedient to confirm the Order, I must balance two expediency tests: the interest of the owners of the land (section 119(1) of the 1980 Act) and the three criteria set out in section 119(6)(a),(b) and (c) of that Act. I have found that in this case the tests in section

119(6)(b) and (c) are met. I must therefore balance the interest of the owners of the land against lesser enjoyment of the path as a whole.

81. This is a very finely balanced case. But in weighing that balance and bringing all the above considerations to mind, I conclude that the loss of enjoyment outweighs the benefits to the landowners. Specifically, the enjoyment to be derived from experiencing the listed farmhouse and associated buildings in their proper context outweighs the enjoyment to be gained from the new path, such that the new path is less enjoyable as a whole. In reaching that view, I have taken into account that the new path is overall the more suitable route from an accessibility perspective but that does not alter my conclusion in relation to loss of enjoyment. I therefore conclude that it is not expedient to confirm the Order.

Conclusion

82. Having regard to these and all other matters raised at the Inquiry and in the written representations I conclude that the Order should not be confirmed.

Formal Decision

83. I do not confirm the Order.

Paul Freer

INSPECTOR

APPEARANCES

For the Order Making Authority:

Mr Neil Weeks
He called: Locum Planning & Highways Lawyer

Ms Marianne Nixon
Public Path Order Officer

For the applicant:

Mr George Laurence
He called: Of Queen's Counsel

Mr Cameron Dick
Applicant

Mr Philip Chambers

Mr Robin Carr FIPROW
Robin Carr Associates

In support of the Order:

Mr Robert Williamson

Dr Ken Morris
Goostrey Parish Council

Objectors to the Order:

Mr Chris Meewezen
Open Spaces Society

Mr Geoffrey Chesters

Mr E. Layzell

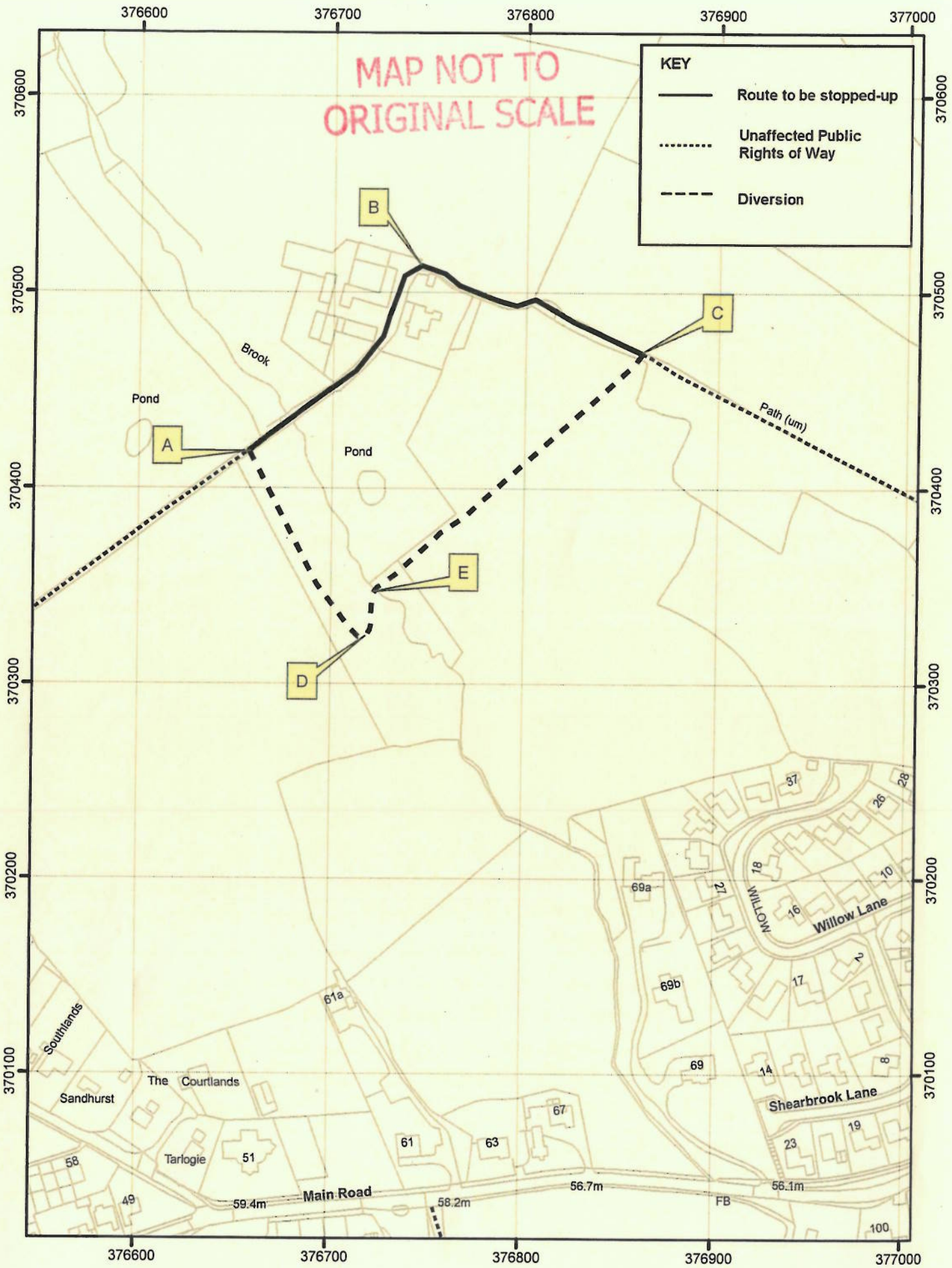
DOCUMENTS SUBMITTED AT THE INQUIRY

- 1/ Proof of Evidence of Bob Williamson
- 2/ Summary Proof of Evidence of Philip Chambers
- 3/ Index of Document Bundle (v2) produced by Robin Carr Associates
- 4/ Additional page to Appendix 1 of Applicant's Statement of Case
- 5/ Plan showing land ownership adjoining footpath Goostrey FP12
- 6/ Replacement for Appendix 3 of Applicant's Statement of Case.
- 7/ Letter from Goostrey Footpaths Group, dated 16 April 2014.
- 8/ Formal Decision Notice for planning application 13/4478C
- 9/ Note produced by the Guide Dogs Society
- 10/ Naismith's Rule
- 11/ Secretary of State's decision dated 24 November 2016 re: Land off Main Road, Goostrey, Cheshire CW4 8LH (Ref: APP/R0660/W/15/3129954), together with the Inspector's Report.
- 12/ Appendix 19 of Applicant's Statement of Case: plan showing gradients on the new path
- 13/ Letter from the Disabled Ramblers, dated 30 January 2020.
- 14/ Copy of note to Mr & Mrs Dick from Ms Monica Robson, dated 25 April 2015.
- 15/ Bundle of documents submitted by Mr George Laurence QC on behalf of the applicant, including the opening submissions on behalf of the applicant.
- 16/ Copy of section 119 of the Highways Act 1990.
- 17/ Statement by Goostrey Parish Council
- 18/ Copy of email dated 7 January 2020 from Robin Carr Associates to Mr Dyke and Mr Meewezen, enclosing additional documents to be relied upon at the Inquiry.
- 19/ Draft Order including the modifications proposed by Cheshire East Borough Council.
- 20/ Closing submission on behalf of the applicant.
- 21/ Closing submissions on behalf of Cheshire East Borough Council.

MAP NOT TO ORIGINAL SCALE

KEY

- Route to be stopped-up
- Unaffected Public Rights of Way
- Diversion



1:2,500

Highways Act 1980, s119
The Cheshire East Borough Council
(Footpath 12 (part) Parish of Goostrey)
Public Path Diversion Order 2016

Plan No.
HA/110A

