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| **Order Decision** |
| On Papers on file |
| **by John Dowsett MA DipURP DipUD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food, and Rural Affairs** |
| **Decision date: 15 March 2022** |

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| **Order Ref: ROW/3270104** |
| * 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.4 (Part) Parish of Poole) Public Path Diversion Order 2019.
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| * The Order is dated 28 March 2019 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 confirmed subject to a modification as set out below in the Formal Decision.** |
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Procedural Matters

1. When the Order Making Authority (the OMA) submitted the Order for confirmation there was an outstanding objection from the Open Spaces Society. This objection was subsequently withdrawn on 19 December 2021.
2. The OMA supports the confirmation of the Order and has requested that, if the Order is confirmed, the first paragraph of the Order is modified to include the words “of the land crossed by the footpath” after the word “landowner” in the third line. This is a very minor modification that would reflect the wording in the Public Path Orders Regulations 1993 (the Regulations) and would not affect the substance of the Order. Consequently, it would not be necessary to advertise a modification of this nature prior to the confirmation of the Order.

The Main Issues

1. Section 119 of the 1980 Act requires me, in this case, to determine:
* Whether it is expedient in the interests of the landowner for the path to be diverted;
* Whether the proposed diversion would not be substantially less convenient to the public; and
* 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, regard must also be had to any material provision contained in a rights of way improvement plan (ROWIP) for the area under Section 119(6A).

Reasons

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

1. From the submitted evidence, the section of Footpath number 4 that would be diverted runs through a field that is used by the landowner for grazing cattle. It is stated that as the present line of the footpath crosses an open field, the presence of cattle within the field deters some users from following the definitive line of the footpath. Instead, these users proceed by way of a private driveway that forms a continuation of Cinder Lane, crossing in front of the landowner’s house, Poole Hall, and then following a private estate track before re-joining the footpath beyond the field. This raises concerns of both security and trespass. It is also stated that users of the footpath may inadvertently cause stress to the cattle in the field by their presence.
2. It is understandable that some people may be anxious about, or feel unsafe, walking through a field where cattle are grazing and seek an alternative route to avoid doing so. However, it is equally understandable that a landowner would wish to discourage unauthorised access to private land that is not subject to any access rights so as to preserve the security of their property and their privacy. The evidence indicates that trespass has continued to occur despite the efforts of the landowner to deter people from doing so. I also accept that walkers, particularly walkers accompanied by dogs, could cause stress to cattle by their presence in the same field, albeit unintentionally.
3. I am, therefore, satisfied that it is in the interests of the owner of the land that the footpath be diverted.

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

1. The field that is crossed by the section of path to be diverted is roughly rectangular in shape. At present, the definitive line of the path crosses this in a generally diagonal manner from the north west corner to a point close to the south east corner. The proposed diversion would route the footpath around the edge of the field, parallel to the western and southern field boundaries. The new route would have a width of 2.5 metres and be enclosed by a metal rail fence. The type of fencing proposed is typically approximately 1.2 metres in height.
2. The proposed diversion would increase the length of the footpath by approximately 140 metres. Although longer, this distance could not be said to be significant given that I am advised that the path is primarily used as a recreational route. The enclosed route around the perimeter of the field would also avoid possible conflicts between users of the footpath and cattle. The walking surface of the footpath would be unchanged as the evidence indicates that the footpath is currently unsurfaced. There is nothing that would indicate that the new route of the path would involve any changes in level that are more severe than those on the existing route.
3. It is set out in the report presented to the OMA’s Public Rights of Way Committee that, at present, the section of the footpath that it is proposed to divert is accessed from the north by way of a stile on the field boundary. The proposed diversion would see this stile replaced by a kissing gate with a width of 1.2 metres which would facilitate access along this section of the path by reducing the difficulty in traversing an obstacle on the route.
4. The current width of the footpath is not recorded in the extract from the Definitive Map and Statement included in the evidence. However, from what I have read, I have no reason to believe that the proposed enclosed width of 2.5 metres for the diversion would not provide a suitably commodious walking route.
5. Taking these points together, from the evidence before me, I find that the new route of the path would not be substantially less convenient to the public.

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

1. The northern end of the footpath links to the south side of Poole Old Hall Lane. From here it runs in a generally southerly direction across several fields for approximately 819 metres to join Cinder Lane to the south west of Poole Hall. The extract from the Definitive Map that I have been provided shows that at its north end Footpath Number 4 allows for onward links to and from two other Public Right of Way footpaths that run from the north side of the lane.
2. The overall length of the footpath would be increased; however, this would not make it any less enjoyable as a primarily recreational walking route. Nor would it affect the existing onward connections to or from other footpaths.
3. As set out above, the proposed diversion would remove the potential for conflict between walkers and cattle being grazed in the field. Whilst I accept that some users of the footpath may not mind walking through a field occupied by cattle and regard it as part of the experience, it is equally likely that other users of the footpath would prefer to be segregated from livestock. As such the proposed diversion would be neither more nor less enjoyable.
4. From the evidence submitted, no important views of the surrounding countryside or nearby buildings would be interrupted, and no features of interest would be by-passed. The proposed new route of the footpath would be within the same medium sized field and whilst the kinetic views obtained when traversing the footpath as a whole would be altered on this section, there is nothing in the evidence that I have seen that would indicate that these sequential views would be any less pleasant than the existing ones.
5. Consequently, I find that that the proposed diversion would not affect public enjoyment of the path as a whole.

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

1. The various maps included in the submitted evidence indicate that no dwellings or other buildings are directly served by the footpath. The other sections of the path form part of a walking route through fields. There is nothing in the evidence before me that would indicate that there would be an adverse effect on other land served by the path.
2. The same landowner owns the land that both the current definitive route and the proposed diversion would run over. The Order has been made at the request of the landowner.
3. I therefore find that the effect of the diversion on other land served by the existing path, and on the land over which the new path would be created, would be a neutral one.

*Provisions within the ROWIP*

1. I have been provided with an extract of the ROWIP for the OMA’s administrative area. There is a section of this highlighted that sets out that the OMA will seek to enhance the accuracy of the Definitive Map and Statement to provide an up to date and accessible format in order to facilitate changes to the network, through the necessary legal processes, for the benefit of landowners and the public. It is, however, not clear how this relates to the substance of the Order before me. Nor does it lead me to a different conclusion on any of the main issues set out above.
2. No other relevant sections of the ROWIP have been brought to my attention.

**Other Matters**

1. I have noted the point that has been raised that the southern termination point of the footpath may not be located on an adopted highway. This falls outside the extent of the proposed diversion and, consequently, is not relevant to the decision.

**Conclusions**

1. Based on the evidence I have been provided with, I have found that the Order is expedient in the interests of the landowner. The proposed route would not be substantially less convenient, and I am satisfied that it is expedient for the Order to be confirmed having regard to its effect on public enjoyment and upon other land served by the existing path and that over which the new path would be created. Consequently, the Order would meet the relevant tests set out in Section 119 of the 1980 Act and there is nothing that I have read that would lead me to conclude that it would not be expedient to confirm the Order.
2. As set out in the procedural matters at the beginning of this decision, the OMA has requested, if the Order is to be confirmed, that it be modified to include the words “of the land crossed by the footpath” after “landowner” in the third line of the first paragraph. As the inclusion of these words would reflect the wording in the Regulations, I have modified the Order accordingly. To avoid a slight tautology, I have also included in the modification an amendment of the word “landowner” to “owner”.

**Formal Decision**

1. I confirm the Order subject to the following modification:

The deletion of the first paragraph of the Order, which sets out the reason for the Order, and the insertion in its place of: “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 owner 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.”

John Dowsett

INSPECTOR

