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| **Interim Order Decision** |
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| On the papers on file  **by Martin Small BA (Hons) BPl DipCM MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 March 2022** |

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| **Order Ref: ROW/3280392** |
| * 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.2 (Part) Parish of Eaton) Public Path Diversion Order 2019. |
| * The Order was sealed on 21 February 2019 and proposes to divert the public right of way shown on the Order Map and described in the Order Schedule. |
| * 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. |
| **Summary of Decision: Confirmation of the Order is proposed, subject to the modifications set out in the Formal Decision below.** |
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Procedural Matters

1. The effect of the Order would be to divert part of Footpath No.2 from its current legal alignment to a new route to the west. When the Order was submitted to the Secretary of State for confirmation the Order Making Authority (the OMA) requested that, if the Order is confirmed, a number of modifications be made to the Order. These relate to the position of Point J and the alignment of the proposed diverted route on the Order Map and consequential amendments to the grid reference for Point J and distances in the Order Schedule.
2. Subsequent to the submission of the Order the objection from the Open Spaces Society was withdrawn. Therefore, having regard to the circumstances of this case based on documentary evidence, no visit to the site was made. I take into account all the evidence and submissions before me and I am satisfied that I can reach my decision on the basis of the papers provided.

The Main Issues

1. This Order has been made in the interests of the owner of the land crossed by the footpath. Section 119 of the 1980 Act therefore requires that, before confirming the Order, I must be satisfied that:
2. it is expedient in the interests of the owner 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
3. the path or way will not be substantially less convenient to the public; and
4. that it is expedient to confirm the Order having regard to:
5. the effect which the diversion would have on public enjoyment of the path or way as a whole;
6. the effect which the coming into operation of the Order would have as respects other land served by the existing rights of way; and
7. 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, account being taken of the provisions as to compensation.

Reasons

*Whether it is expedient in the interests of the owner of the land crossed by the footpath that the way should be diverted*

1. The Order has been made in the interests of the owner of the land (the applicant). The legal alignment of Footpath No.2 runs in part through the middle of the landowner’s agricultural field and garden and in proximity to the landowner’s dwelling and outbuildings. The use of the footpath therefore significantly affects the landowner’s privacy, security and land management.
2. The proposed route would take walkers away from the middle of the field and the grounds of the residential property and outbuildings. I therefore find that the Order is expedient in the interests of the landowner.

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

1. The proposed route shown on the Order Map would be approximately 132 metres, or 19%, longer than the existing route. The Order as proposed to be modified would reduce the length of the diverted route by approximately 11 metres. The rights of way network and surrounding area suggests that the footpath is most likely used as a walk for recreational purposes. In this context the increase in overall length would not make the proposed route substantially less convenient.
2. The proposed route would divert only part of the existing route, have the same suitable surface for walking as the existing route and be of an adequate width. It would have a kissing gate at either end at Points A and E shown on the Order Map, a reduction in limitations from the two kissing gates, two gates and two stiles on the current route.
3. I therefore find that, noting the proposed modification to the Order route, the proposed alternative route would not be substantially less convenient to the public.

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

1. The proposed diversion affects only a part of Footpath No.2. The proposed route would provide a more enjoyable walking environment partly alongside a stream and trees away from the dwelling and outbuildings. The sense of intrusion and awkwardness from walking through a residential property would be reduced. The diverted route would be more accessible than the existing route. These benefits would outweigh any reduction in enjoyment from the increased length, which in any event would be likely to be limited given the recreational nature of the use of the footpath.
2. I therefore find that the proposed diversion would not adversely affect the enjoyment of the footpath 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*

1. There is no evidence before me that the proposed diversion would have any effect 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, account being taken of the provisions as to compensation*

1. The land over which the existing and alternative route passes is in the ownership of the applicant who naturally supports the Order. There is no evidence before me of any adverse effect on the land over which the new route passes such that compensation issues are relevant.

*Rights of Way Improvement Plan (ROWIP)*

1. The Cheshire East ROWIP 2011-2026 refers to facilitating changes to the public rights of way network, through the necessary legal processes, for the benefit of landowners and the public. The Order is therefore in accordance with the ROWIP.

*Whether it is expedient to confirm the Order*

1. The Order is in the interests of the landowner, the alternative route is not substantially less convenient and there will be no overall loss of enjoyment from its use. The proposed point of termination is in the same place as the existing point of termination and is therefore substantially as convenient. Consequently I conclude that it is expedient to confirm the Order subject to the modifications as set out below.

Conclusion

1. Having regard to the written representations I conclude that the Order should be confirmed subject to modifications.

**Formal Decision**

1. I propose to confirm the Order subject to the following modifications:

In the Order Schedule

In Part 2: Description of new Path or Way:

* Amend the NGR for point J in the Order from SJ 8553 6519 to SJ 8555 6518.
* Amend the distance between point I and J on the Order Map from 73 metres to 81 metres.
* Amend the distance between point J and E on the Order Map from 144 metres to 125 metres.
* Amend the total length from 485 metres to 474 metres.

On the Order Map

* Amend the alignment of the diverted route at Point J as shown on the modified Order Map.

1. As the confirmed Order would (if modified) affect land not affected by the Order as submitted I am required by Schedule 6, paragraph 2(3) of the 1980 Act to give notice of my proposal to modify the Order and to give an opportunity for objections and representations to be made on the proposed modifications. A letter will be sent to interested parties about the advertisement procedure.

Martin Small

INSPECTOR

