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| **Order Decision** |
| Inquiry held on 10 January 2023 |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 8 March 2023** |

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| **Order Ref: ROW/3268692** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 (the 1990 Act) and is known as The Cheshire East Borough Council (Footpath No.14 Parish of Sandbach) Stopping Up Order 2019. |
| * The Order is dated 11 April 2019 and proposes to stop up part of a footpath as shown on the Order Map and described in the Order Schedule. |
| * There were 53 objections outstanding at the commencement of the inquiry. |
| **Summary of Decision: The Order is confirmed subject to modifications that do not require advertising.** |
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Procedural Matters

1. I held a public inquiry into this Order on 10 January 2023 at Holmes Chapel Community Centre. I made an unaccompanied visit to the site on 9 January when I was able to view the Order route. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary.
2. In writing this decision I have found it convenient to refer to points on the Order route as shown on the Order Map. I therefore attach a copy of this map.

The Main Issues

1. Section 257 of the 1990 Act requires that I must consider whether it is necessary to divert the footpath in question in order to allow development to be carried out in accordance with a planning permission already given but not implemented.
2. In addition, Paragraph 7.15 of the Department of the Environment, Food and Rural Affairs, Circular 1/09 advises that consideration should also be given to any disadvantages or loss likely to arise as a result of the stopping up, either to members of the public, or to persons whose properties adjoin or are close to the existing footpath.

Reasons

Whether it is necessary to stop up the footpath to allow development to be carried out

1. The development that has been approved includes the construction of 50 houses, an area of public open space and a children’s play area. The existing alignment of Footpath 14 between Points A and B runs through the corner of one of the proposed houses and across the driveways/parking spaces and front gardens of 6 others. None of the 7 affected properties has yet been built.
2. The planning permission given requires the development to be carried out in total in accordance with approved plans and it was stated on behalf of the developer that, if the footpath remained on its current alignment, it would not be possible to proceed with the construction of the 7 houses affected by it.
3. It therefore seems clear that it is necessary to stop up the footpath to allow the approved development to be carried out.

The effect of the Order on members of the public, or persons whose properties adjoin or are close to the existing footpath

1. Footpath 14 was said to provide an important and well-used link between the built-up area and open countryside and other parts of the Rights of Way network and this was not contested. It might appear from the Order and the Order Map that this link would be lost if the Order is confirmed. However, this is not the case. Only part of Footpath 14, roughly 63m in length is affected by the Order and, although it appears from the Order Map that the stopping up of this section will leave two cul de sac sections of path with no link between them, this would also not be the case. Between Points A and B, an estate road and associated footway which will become an adopted public highway provides a link between the two sections of the footpath.
2. If the Order is confirmed, users of Footpath 14 will be able to use the footway alongside Larch Drive between Points A and B. This runs parallel to the existing line of the path a few metres to the south-east. This will add no significant distance to journeys. This means that the remaining sections of Footpath 14, along with the footway, would still provide walkers with a link between the built-up area and open countryside.
3. The footway is 2m wide with a hard even surface although with a shallow crossfall to the road edge. The existing path is unsurfaced and of undefined width.
4. The main perceived disadvantage of use of the footway rather than the existing path seemed to be the fact that it is alongside a road and subject to crossing by vehicles to access the drives of 6 houses. It was also feared that it might become obstructed by parked vehicles although such parking would be illegal and likely to obstruct private drives.
5. It was suggested that, if the Order is not confirmed, the developer will not be able to build the 7 houses affected and an opportunity would be created for the existing line of the footpath to be incorporated into an attractive landscaped open area which would provide a much more pleasant experience for path users. I understand this argument but, in fact, if the Order is not confirmed, the effect will be the maintenance of the line of the path in its current condition. That is an undefined route across what appears to be waste land. There would be no guarantee that this would be improved in the manner suggested.
6. I note that in a survey carried out for a period of 9 days in August 2021, when both the definitive line of the footpath and the footway alongside Larch Drive were available for use, all of the 607 recorded users walked on the footway rather than the footpath. This is unsurprising given the relative condition of the two routes but does suggest that members of the public found use of the footway acceptable.
7. I have seen no evidence to suggest that the stopping up proposed would result in any disadvantage or loss to persons whose properties adjoin or are close to the existing footpath.
8. Overall, the proposed stopping up of the part of Footpath 14 included in the Order will result in little disadvantage or loss to members of the public or persons whose properties adjoin or are close to the existing footpath.

Other Matters

1. Cheshire East Borough Council, the Order Making Authority, has requested that, if the Order is confirmed, it be modified to add the word ‘part’ to the title of the Order. This would more accurately reflect the effect of the Order and would seem to be an entirely reasonable modification which will not adversely affect or mislead any party. I also note that the title of the Order Map already includes the word ‘part’. I therefore propose to make the modification requested.
2. Concern was expressed by objectors regarding the processes leading to the making of the current Order and the possibility that, if there had been more or better consultation, a more satisfactory proposal might have emerged. Although I understand these concerns, they lie outside the criteria which I must take into account in determining the Order and I have accordingly been unable to give weight to them in reaching my conclusions. I was however satisfied that the proper statutory procedures had been followed in the making of the Order itself.

Conclusions

1. Bearing in mind the above, I conclude that the Order should be confirmed subject to the minor modification mentioned above.

Formal Decision

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

Insert *“(part)”* after the words *“Footpath No.14”,* in the title of the Order and paragraph 4 of the Order.

Barney Grimshaw

inspector

appearances

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| **For the OMA** |  |
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| Howard Leithhead | Counsel, representing Cheshire East Borough Council (CEBC) |
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| Who called: |  |
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| Marianne Nixon | Public Path Orders Officer, CEBC |
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| **Supporters** |  |
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| Merrow Golden | Counsel, representing Persimmon Homes (North West) Ltd |
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| Who called: |  |
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| Clive Burbridge | Director, Iceni Projects Ltd |
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| **Objectors** |  |
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| Trevor Boxer | Chairman, Sandbach Footpaths Group (SFG) |
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documents

1. Bundle of documents compiled by CEBC.
2. Proof of Evidence of Marianne Nixon, CEBC.
3. Statement of Case of Iceni Projects Ltd on behalf of Persimmon Homes.
4. Proof of Evidence of Clive Burbridge, Iceni Projects ltd.
5. Statement of Case of SFG.
6. SFG response to Iceni/Persimmon Statement of Case.
7. Proof of Evidence of Trevor Boxer, SFG.
8. Opening Submission on behalf of CEBC.
9. Two photographs submitted by CEBC.
10. Closing Submission on behalf of SFG.

