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| **Order Decision** |
| Site visit made on 31 May 2023 |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 18 July 2023** |

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| **Order Ref: ROW/3290682** |
| * This Order is made under Section 118 of the Highways Act 1980 and is known as The Cheshire East Borough Council (Footpath No. 20 Parish of Bunbury) Public Path Extinguishment Order 2019.
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| * The Order is dated 11 July 2019 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
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| * There was one objection and one representation outstanding when Cheshire East 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 the modification set out below in the Formal Decision.**  |
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Procedural Matters

1. The applicant for the Order has sold Fox Covert and no longer has an interest in it. The new owners have confirmed they wish to proceed with the extinguishment and made a supporting statement.
2. In 2019 an outline planning application was made by the owners of the adjoining field for seven houses. The objector questioned if the Order had been made to facilitate development. If this were the case, the Order should have been made under the Town and Country Planning Act 1990 (the 1990 Act). Although the planning application was made in the same month as the extinguishment order application, I am advised they were from different landowners and concerned separate matters. Furthermore, the footpath was outside of the red-line boundary for the proposed development and the planning application was subsequently withdrawn in 2020. I am satisfied the Order was made under the correct legislation and an application under the 1990 Act would be inappropriate as planning permission has not been granted.
3. I will refer to various points on the Order route and the footpaths connected to it. I have appended a copy of the Order plan to the end of my decision.

The Main Issues

1. The Order is made on the grounds that the path is not needed for public use. By virtue of Section 118(2) of the Highways Act 1980 (1980 Act), if I am to confirm the Order, I must be satisfied it is expedient to extinguish the path having regard to:
2. the extent, (if any) to which it appears the path would, apart from the Order, be likely to be used by the public; and
3. the effect the extinguishment of the right of way would have as respects land served by the path, account being taken of the provisions for compensation.
4. I also need to have regard to any material provision of any rights of way improvement plan prepared by any local highway authority whose area includes land over which the Order would extinguish a public right of way.
5. I have had regard to the judgements of *R v SSE ex parte Stewart* [1980] KPL 537 and *R v SSE (ex parte Cheshire County Council* [1991] JPL537 which clarified the relevant tests to be applied. Whilst the Order Making Authority (OMA) must consider the need for the path for public use when making the Order, I must look at its likely future use.

Reasons

*The extent to which it appears the path would, apart from the Order, be likely to be used by the public*

1. The Order route runs over a grass strip alongside the driveway of Fox Covert, a residential property, between A and B. It continues to point C between the house and a greenhouse. It then crosses the rear garden and adjoining field before joining Bunbury Footpaths 17 and 21 at point D. There are stiles on either side of the field. The footpath was open and available for use at the time of my visit.
2. If the Order route is extinguished, anyone wishing to travel between A and D could walk west along Wyche Road then along Bunbury Footpath 19, and Bunbury Footpath 17. Alternatively, they could walk east along Wyche Road and then along Bunbury Footpath 21. Footpath 19 is an enclosed path between properties and fields, Footpath 17 is a field edge path and Footpath 21 runs along an enclosed track between fields. There is a footway along the northern side of Wyche Road, and at the time of my visit, there was hardly any traffic.
3. The alternative routes are approximately 170 metres and 65 metres longer. In reality, these distances would be shorter as anyone walking along Wyche Road is likely to join the first footpath they reach to reduce roadside walking. I consider these distances to be minimal, particularly as this footpath network appears to be primarily used for recreational walking.
4. There are no obvious signs of use of the Order route and nettles are growing up around the stiles within the fields. By contrast, Bunbury Footpaths 17, 19 and 21 have very clear worn lines within the enclosed and field sections and are clearly well used.
5. Strava Heat Map data for the last two years indicated that Footpaths 20 and 21 are well used with Footpath 19 used slightly less. Section A to C of the Order route appeared to be used to a slightly lower level than Footpath 19. It showed no use of Section C to D. One of the owners/occupiers of Fox Covert provided his personal Strava Heat Map data for the same period. This suggests the use of the Order route between A and C shown on the Heat Map is entirely by him.
6. The owners of Fox Covert stated they have only seen people walking the Order route on a handful of occasions over the last three years. Twelve members of the public and the Parish Council responded to the pre-order consultation supporting the extinguishment. Five people stated they have never seen anyone using the Order route and ten said they chose not to use it because there were better alternative routes which did not involve walking through private gardens. Eight said the extinguishment would not affect their enjoyment of the footpath network and two stated there would be no detriment to the community. Two people objected to the closure, one of whom chose to use the Order route as little as possible.
7. From the evidence submitted most members of the public would avoid walking through private gardens and would use alternative routes where available. The comments from the owners, responses to the consultation letters and the Strava Heat Map indicate the Order route is rarely used, and walkers prefer other routes which avoid private gardens. Although there is occasional use of the Order route, this is very limited, and the public are unlikely to use it. There is nothing before me to indicate use of the Order route is likely to increase in the future.

*The effect the extinguishment of the path would have as respects land served by the path, account being taken to the provisions as to compensation*

1. The Order route runs through the garden of Fox Covert crossing diagonally over the rear lawn which is used by children playing football and other games. There are large windows at the rear of the property and the footpath passes very close to the side of the house and a greenhouse. The previous owners experienced incidents of trespass and threatening behaviour. I consider the extinguishment of the footpath would substantially improve the privacy and security of the residents.
2. The owners of the field also support the extinguishment and it would enable better management of their land. Access to the field is available through a field gate off Wyche Lane and a pedestrian gate into their adjoining property. They also have the option to retain the stile at point D if they require access here. The extinguishment would also benefit them if they reconsidered development in the future. I consider the extinguishment would not affect access to their land or have any other negative impact.

***Rights of Way Improvement Plan***

1. The Rights of Way Improvement Plan states the Council ‘will facilitate changes to the network, through the necessary legal process, for the benefit of landowners and the public.’ The Order will benefit the landowners with limited impact on the public. No other material considerations are raised.

***Whether it is expedient the path should be stopped up***

1. I should only confirm the Order if I am satisfied it is expedient to do so. I need to consider if it is suitable and appropriate to confirm the Order taking into account any other relevant considerations.
2. The objector believes the Council should preserve and encourage the use and maintenance of all public footpaths. He does not believe the Council have given a reason for the extinguishment of the Order route.
3. The Order clearly states it is made because the footpath is not needed for public use. The Council aim to preserve and maintain the rights of way network and generally does not accept applications to extinguish them. Before accepting the extinguishment application, consideration was given to diverting the footpath, but no practical route was found. Any diversion had to retain the footpath within the garden due to the extent of the footpath network around it. This would not improve the security or privacy of the residents.
4. I have concluded above there is limited use of the Order route, and the public are unlikely to use it now or in the future. I have also concluded the extinguishment would benefit the landowners. Consideration was given to a diversion, but this was not practical. Therefore, I am satisfied it is expedient to confirm the Order.

**Other Matters**

1. No path width was included within the Order. Rights of Way Circular 1/09 states at 5.13 that authorities should specify widths in every 1980 Act Order. Rights of Way Advice Note No. 16 - Widths in Orders, states that it is acceptable to use a phrase such as ‘the whole of the width’ where the intention is to extinguish all of the affected section.
2. The Definitive Statement does not include a path width. The Council was unable to identify a width on site and did not want to assume one. They considered the Circular and Advice Note to be advisory guidance rather than a statutory duty, therefore, the Order is not fatally flawed. They will ensure that widths were included in future Orders. The Peak and Northern Footpath Society, who raised this matter, were content with this explanation and approach.
3. I consider reference to the width should be included so it is clear the whole width is extinguished. I am satisfied that this is a simple clarification and does not require further advertisement.

Conclusions

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with modifications to include a width.

Formal Decision

1. I confirm the Order subject to the following modifications:
* In the description of the path, after ‘**That length’** insert **‘and the whole of the width’**.

Claire Tregembo

INSPECTOR

**Order Plan**

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