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| **Order Decision** |
| Site visit made on 27 February 2024 |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 March 2024** |

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| **Order Ref: ROW/3315992** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Cheshire West and Chester Borough Council (Public Footpath 2 (Part) Willington (Part now in the Parish of Utkinton and Cotebrook)) Public Path Diversion Order 2021.
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| * The Order is dated 21 October 2021 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 were two objections outstanding when Cheshire West and Chester 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 the modification set out below in the Formal Decision.** |
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###### Procedural matters

1. The proposed footpath is shown on the Order plan running between points D-E-B. However, the Order states the width of the ‘footpath between points C-D-B …is 2 metres wide throughout’. This appears to be a typographical error and it is clear the width is referring to the proposed footpath. Cheshire West and Chester Borough Council (the OMA) have requested I modify this error if I confirm the Order. I do not consider it affects the validity of the Order, but if I confirm the Order, I will need to modify it.
2. The Order shows the existing footpath on the line shown on the definitive map (DM), but part of the footpath is being used on a different line on the ground and the definitive line is obstructed near point B. Some of the proposed footpath follows the line used on the ground and part of the walked line would no longer be available if the diversion were confirmed.
3. It is suggested that the OMA are taking advantage of the Order to correct the alignment shown on the DM. Section 56 of the Wildlife and Countryside Act 1981 provides that the DM is conclusive evidence of the alignment of public rights of way shown on it. Any party who considers the DM to be in error can make an application for a definitive map modification order to correct it. Historic Ordnance Survey maps show a line similar to the used line but nothing else is available to me to suggest the DM is in error. On balance, I am satisfied the existing route shown on the Order plan accurately reflects the route shown on the DM and this legally exists unless and until an Order altering it is confirmed. I do not consider a diversion onto the walked line affects the validity of the Order.
4. When considering the advantages and disadvantages of the proposed diversion I will make comparisons between the line shown on the DM and the proposed footpath.
5. I will refer to various points shown on the Order map in my decision. For ease of reference, I have appended a copy of the Order plan to the end of my decision.

The Main Issues

1. Section 257(1) of the Town and Country Planning Act 1990 (the 1990 Act) provides for an Order to be made authorising the stopping up or diversion of a footpath, bridleway, or restricted byway if it is necessary to do so in order for development to be carried out in accordance with planning permission granted under Part III of the 1990 Act.
2. In considering the confirmation of the Order, the disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public or persons whose properties adjoin or are near to the existing highway should be weighed against the advantages of the proposed Order. There are effectively two issues that must be considered, the necessity test and the merits test. Confirmation of the Order requires that both are satisfied.

**Reasons**

1. The Order route joins John Street at its western end. The proposed diversion would relocate the footpath 100 metres southwest on John Street. The proposed footpath will run along a recently created agricultural track between points D and E which was granted planning permission in 2020 before heading east across an arable field.

***Whether the diversion is necessary to allow development to be carried out in accordance with planning permission***

1. Planning permission for a forestry storage building was granted on 15 September 2021. The building is over the definitive line of the footpath between points A and E. Planning permission will expire on 15 September 2024.
2. I am satisfied that planning permission is extant and directly relates to the land crossed by the Order route. I am also satisfied that the diversion is necessary to allow the development to be carried out in accordance with the approved planning permission.

***Disadvantages of the proposed order***

1. Concerns are raised that the proposed footpath is less useful and less convenient for walkers and increased road walking will lead to reduced road safety.
2. The primary use of the Order route appears to be for recreational purposes. Promoted routes are cited which use both the Order route and Bridleway 8. Walkers using these routes will have to walk 100 metres further along John Street. However, the proposed diversion will move the footpath 100 metres closer to the village of Utkinton and Footpath 1, reducing road walking and increasing convenience for path users coming from the southeast. Information about the number of walkers using the footpath and where they are coming from is not provided. Therefore, I am unable to determine if the proposed diversion will increase or decrease road walking and convenience for most path users.
3. John Street is a narrow rural road with several bends and no footways. It has a 60mph speed limit between Bridleway 8 and point D which continues southeast of D for approximately 100 metres. The Transport Assessment produced for the agricultural track planning application monitored traffic speeds at point A and estimated them to be between 20mph and 30mph. A traffic survey undertaken in Spring 2022 found average speeds of 27.8mph for northbound vehicles and 26.9mph for southbound vehicles. The cars that passed me whilst I was walking between Utkinton, the Order route and Bridleway 8 appeared to be travelling at similar speeds and all slowed further to pass me.
4. Accident figures covering 24 years show four accidents along John Street. One to the west of Bridleway 8, one at point A where the existing footpath joins the road, one south of the proposed footpath and another in Utkinton. Accident reports for the accidents at point A and to the south of the proposed footpath show that neither involved pedestrians and the accident near point A involved only one car. I have not seen accident reports for the other two accidents. I do not consider there is any evidence before me to indicate the road between points A and D is less safe than between point A and Bridleway 8. I do not consider the additional 100 metres of roadside walking for some to be a significant disadvantage, particularly when others will be walking shorter distances.
5. The existing footpath runs along a long-established farm track between A and E. The proposed footpath runs over a newer farm track between D and E with an established hedge on the east side and a post and wire fence with hedgerow planting along the western edge. The existing footpath is greener and could be considered more attractive than the proposed footpath. However, the new planting will grow and give the proposed route a similar appearance to the existing footpath.

***Advantages of the proposed order***

1. Visibility at point A is limited by the bend, particularly when looking southwest. The proposed footpath joins the road on a straighter section and visibility is much better. The wide bell mouth access here also means that walkers do not have to stand on the very edge of the road to be able to see approaching traffic. I consider the improved visibility makes the proposed footpath safer than the existing footpath.
2. There are field gates on the existing footpath at points A and C. There is a stile on the used route at point E which is also on the proposed footpath. It is intended to replace this stile with a kissing gate. I have been informed there was another stile on the footpath between A and E, but this was not present at the time of my site visit. The existing footpath is obstructed by a fence and hedge near point B with no stile or gate in this boundary. At the time of my site visit, ropes and wires also obstructed the existing footpath at two points between A and C, although it was possible to pass underneath them. A kissing gate has already been provided at point D. The replacement of the stile with a kissing gate would benefit path users and kissing gates are normally easier to use than field gates. The diversion would remove the need for a structure in the boundary near point B and there would be fewer structures on the proposed footpath.
3. The farm track along the existing footpath is prone to flooding in heavy rain and can become boggy and rutted. The farm track between D and E has a firmer, more even surface making it easier to use and it does not appear to be prone to flooding. This track is much wider than the track along the existing footpath making it easier for walkers to pass any vehicles using it.
4. At the time of my site visit, the existing footpath was waterlogged and muddy at point C. The existing footpath between C and B crosses a cropped field close to, but not along the field edge. The proposed footpath between E and B will be along the field edge, so it will not be subject to ploughing and cropping and the public appears to be using this section to avoid the obstruction at point B. Grass verges exist along most of this field edge, although their condition could be improved. However, paragraphs 2 and 3 of the Order provide that the proposed footpath shall be created to the reasonable satisfaction of the Authority and the diversion will not come into effect until the OMA certifies that it has been provided. I consider the proposed footpath between E and B to be easier to use than the existing footpath between C and B.
5. The existing footpath passes alongside Tirley Lodge, and it is possible to see into the property from the footpath. The proposed diversion would take the footpath away from this property improving their privacy. There are no properties along the proposed footpath.

***Whether the development is substantially complete***

1. At the time of my site visit, no work had commenced on the proposed forestry storage building. I am satisfied the development is not substantially complete.

***Conclusions on the relevant tests***

1. I have concluded above that it is necessary to divert the Order route to allow development to be undertaken in accordance with the approved planning permission.
2. Although road walking will increase for some walkers, it will decrease for others. I do not consider the additional 100 meters to be a significant disadvantage and there is nothing before me to indicate the road between points A and D is more dangerous. Path users will benefit from improved surface conditions, fewer and easier-to-use structures, easier passing of vehicles on the access track, and a field edge rather than a cross field footpath. The proposed diversion will also improve the privacy of Tirley Lodge. I consider the benefits of the proposed diversion to the public, landowner and residents of Tirley Lodge will outweigh any disadvantages caused by additional road walking for some walkers. I am satisfied the Order should be confirmed.

***Other Matters***

1. It is suggested that the proposed development could have been located elsewhere. Planning permission has already been granted and I must determine the Order based on the approved development. The planning merits of the development are not an issue before me, and the Order is not an opportunity to question the approved development.
2. Alternative diversion routes are suggested. However, I am only able to consider the Order before me and am not able to consider alternative routes.

Conclusions

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to a minor modification to correct a typographical error.

Formal Decision

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

In Part 2 of the Schedule to the Order replace ‘C-D-B’ in the final sentence with ‘D-E-B’.

Claire Tregembo

INSPECTOR

**Order Plan**

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