

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	7 th December 2015
Report of:	Public Rights of Way Manager
Subject/Title:	Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 19 (part), Parish of Middlewich

1.0 Purpose of Report

The report outlines the investigation to divert part of Public Footpath No. 19 in the Parish of Middlewich. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to a planning application. The application has been submitted by Mr B Nicholson of Pochin Developments Ltd., Brooks Lane, Middlewich, Cheshire, CW10 0JQ for development of a 'BI office/B2/B8 warehouse and yard facility for Scottish Power' (Planning reference: 15/2609C). The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendations

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 19 Middlewich, as illustrated on Plan No TCPA/025 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendation

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, can make an Order diverting a footpath if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with a planning permission that has been granted.

3.2 It is considered that it is necessary to divert part of Footpath No. 19 Middlewich as illustrated on Plan No. TCPA/025 to allow for the development of the warehousing (including yard and office) by Scottish Power as detailed within planning reference: 15/2609C.

3.3 Consultations have not elicited objections to the proposal and it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

4.0 Ward Affected

4.1 Middlewich

5.0 Local Ward Members

5.1 Councillor S McGrory
Councillor M Parsons
Councillor B Walmsley

6.0 Financial Implications

6.1 Not applicable

7.0 Legal Implications

7.1 Objections received to the proposed order, if not withdrawn, could lead to a public inquiry or hearing with attendant legal involvement and use of resources.

8.0 Risk Assessment

8.1 Not applicable

9.0 Background and Options

6.1 An application has been received from Mr B Nicholson of Pochins Developments Ltd., Brooks Lane, Middlewich, Cheshire, CW10 0JQ requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 19 in the Parish of Middlewich.

6.2 Public Footpath No. 19 Middlewich commences at its junction with Brooks Lane at O.S. grid reference SJ 7074 6609 and runs in generally north easterly direction between industrial premises for a distance of approximately 129 metres to then cross a railway bridge. Immediately after the railway bridge, it bears in a generally south, south easterly direction for a distance of approximately 1,953 metres terminating at its junction with Bradwall Road at O.S. grid reference SJ 7245 6524. Across this longer section, the footpath crosses scrubland and then pasture land, several roads (Sanderson Road and ERF Way twice) and passes adjacent to a number of other industrial premises.

The section of path required to be diverted by Pochins Developments Ltd. is shown by a solid black line on Plan No. TCPA/025 running between points A-B-C. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-D-E-C.

- 6.3 The existing alignment of the footpath section proposed for diversion by Pochins Developments Ltd., would be directly affected by development of the office, warehousing and yard as shown by the solid black line on Plan No. TCPA/025 running between points A-B.

The land over which the current route runs and over which the proposed route would run is entirely owned by Pochin Developments Ltd.

- 6.4 Planning permission was granted to Pochin Developments Ltd on 17th August 2015. The application is cited as Planning Permission Ref: 15/2609C. The details of the application are for the development of offices and warehousing with yard, for Scottish Power.

- 6.5 With regard to the development sought by Pochin Developments Ltd, part of the current line of Public Footpath No.19 Middlewich would be obstructed by the offices, warehousing and yard. Therefore, the footpath diversion is required to preserve public access around the development.

The length of footpath proposed for diversion (points A-B-C) is approximately 262 metres of which 118 metres (points A-B) would be directly affected by the development.

- 6.6 The proposed diversion route would skirt the perimeter of the new development, initially following a north easterly direction within the development through a landscaped area (points A-D) and then bearing in a south easterly direction along the outside of the development over grassland to ERF Way (points D-E). This part of the diversion route would be 2 metres wide and unenclosed.

On reaching ERF Way (point E), the proposed diversion route would exit the grassland via a kissing gate to continue in a generally south, south easterly direction on an unenclosed, 2.5 metre strip of grassland provided to the north of the pavement terminating immediately at a kissing gate (point C).

Re-alignment of the footpath as proposed between points E-C, would resolve a current mapping anomaly that routes the current definitive alignment to cross ERF Way twice (between points B and C on Plan No. TCPA/025), eliminating the need for the public to negotiate vehicular traffic on ERF Way.

The reason for not placing the new route between points E-C, on the pavement is that two public highways cannot be placed on the same alignment. One would need to be extinguished. So placing the footpath to the north of the pavement separates the two and preserves the public footpath rights.

The diversion would be made in the interests of the landowner.

- 6.9 The local Councillors have been consulted about the proposal. No comments have been received.
- 6.10 Middlewich Parish Council has been consulted about the proposal and have registered their support for the diversion.
- 6.11 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 6.12 The user groups have been consulted. No objections have been received. However, the Peak and Northern Footpath Society registered that the proposal is better than a previous proposal (abandoned) making reference to section 7.8 of the Rights of Way Circular which gives the following guidance:

'In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.'

From point A, the previous proposal would have diverted the footpath onto the pavement of ERF Way that runs adjacent to the southern perimeter of the development which would be against the above guidance but at the time, there was no alternative route that was acceptable to Pochin Developments Ltd. Following discussion with the Congleton Ramblers Group (whose members objected to the initial proposal), this proposal was revised to that detailed in this report.

- 6.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.14 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be an improvement to the current route as it would take away the need for users to twice cross ERF Way.

10.00 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Background Documents: PROW file 207D/506