

<b>DEVELOPMENT CONTROL &amp; REGULATION COMMITTEE</b>	<b>Paper No.</b>
<b>Meeting date: 15 April 2020</b>	
<b>From: Executive Director – Economy and Infrastructure</b>	

**HIGHWAYS ACT 1980 SECTION 119 APPLICATION TO  
DIVERT PUBLIC FOOTPATH NO 109124 CITY OF CARLISLE**

**1.0 EXECUTIVE SUMMARY**

- 1.1 *An application has been received to divert a section of public footpath no 109124 in the City of Carlisle.*
- 1.2 *This can be done under Sections 119 of the Highways Act 1980 and consultations have taken place so as to assist members to reach a decision as to whether or not a diversion order should be made.*
- 1.3 *The plan at Appendix 1 shows the proposal and a location plan is included at Appendix 2.*

**2.0 POLICY POSITION, BUDGETARY AND EQUALITY  
IMPLICATIONS, AND LINKS TO COUNCIL PLAN**

- 2.1 *The relevant corporate theme is “To provide a safe and well managed highway network, secure infrastructure improvements and support local economic growth”.*
- 2.2 *The relevant procedure is an “administrative quasi-judicial” one. The conditions which must be satisfied for an order to be made and confirmed are that it should appear to Members “that it is expedient” for the public footpath to be diverted and that there is a need to make an order on the grounds set out in paragraph 5.1 of this report. Members have discretion as to whether or not to make an order, but such discretion must be exercised reasonably.*

### **3.0 RECOMMENDATION**

- 3.1 ***That, pursuant to the power set out at Part 2G paragraph 2.1(g)(iii) of the Council's Constitution, an order be made under Section 119 of the Highways Act 1980 to divert a section of public footpath no 109124 in the City of Carlisle as shown A-B to a new route A-C-D-E-F-G-H-I as shown on the plan at Appendix 1 and that all necessary action be taken to confirm the order.***

### **4.0 BACKGROUND**

- 4.1 The proposed diversion order is in the interests of the landowner.
- 4.2 According to the definitive statement the existing route of the path is recorded as running "over a track along a lane". Over time development on adjacent land to the south and east of the track has incrementally encroached onto the historic and recorded alignment. As such the recorded path now largely runs within the curtilage of these adjoining properties. The development has generally compressed the path's available width and shifted the alignment to the north-west.
- 4.3 The proposed diversion runs approximately parallel to the recorded route and benefits the applicant landowners' in the running of their day to day business by removing the right of way from within their property boundary.
- 4.4 The works required to bring the new route into use for the public comprises relocation of a boundary fence between points H & I to maximise the available width which will be undertaken by the applicant landowner.
- 4.5 There is also a requirement to cut back the hedgerow on the north-west side of the path along with a small amount of hedge bank re-profiling to maximise the available width. This will be included in the ongoing improvement scheme for the entire path which will be undertaken by the County Council under its Rights of Way Improvement budget.
- 4.6 All costs associated with processing of the diversion order will be paid by the applicant landowner

#### **Consultation**

- 4.7 The statutory undertakers have been consulted and none are affected.
- 4.8 A consultation has been carried out with
- Carlisle City Council – no response received
  - Ramblers – no response received
  - Local Ramblers representative – no response
  - Cumbria and Lakes Local Access Forum (CALLAF) – supports the proposal

which will be no less convenient or lacking in user amenity but is concerned that the width of the route between the adjacent periphery fencing should be adjusted to an acceptable standard of width.

Byways and Bridleways Association – no response received

British Horse Society – no response received

Open Spaces Society – no response received

Cyclists' Touring Club – no response received

British Driving Society – no response received

Auto Cycle Union – no response received

Landowners – one of the known affected landowners has given their written consent to the proposed diversion.

As part of the land over which the proposed diversionary route runs is unregistered, notices were erected on site for a period of 21 days to allow any landowners to declare an interest. The notices were checked weekly and renewed and replaced as necessary. No-one came forward and therefore dispensation has also been sought from the Planning Inspectorate directing that it is not necessary to serve notice on the owners and occupiers of all the land over which the Order path runs.

- 4.9 The local member for Belle Vue, Christine Bowditch has been consulted and has been in communication with the Countryside Access Team but has made no formal response.

## **5.0 LEGAL IMPLICATIONS**

- 5.1 Under Section 119(1) of the Highways Act 1980 we must be satisfied that in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted.
- 5.2 The diversion must not alter any point of termination of the path, other than to another point on the same highway or a connected highway (Section 119(2) Highways Act 1980) and which is substantially as convenient to the public.
- 5.3 Further, under Section 119(6) of the Highways Act 1980, if no objections are received against the made order, we must be satisfied that the public footpath diversion is expedient and will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which:-

The diversion would have on public enjoyment of the path or way as a whole;

The coming into operation of the order would have as respects other land

served by the existing right of way; and

Any new public right of way created by the order would have as respects the land over which right is so created and any land held with it.

- 5.4 Under Section 119(6A)(b) of the 1980 Highways Act, our Rights of Way Improvement Plan (now incorporated in the Cumbria Countryside Access Strategy) has been considered and the proposal accords with two of the five priority areas of work identified therein namely: Improving Rights of Way and Countryside Access and Managing Rights of Way and Countryside Access .
- 5.5 Under Part 2G paragraph 2.1(g) (iii) of the Constitution, the Committee has power to divert footpaths and bridleways.

## **6.0 OPTIONS**

- 6.1 The Committee may accept or reject the recommendation. If the recommendation is accepted by Members and an order is made any objector will have an opportunity, before the order is confirmed to submit a further objection. The matter will then be referred to the Secretary of State for a decision as to whether or not the order should be confirmed in circumstances where the objection is not withdrawn.

## **7.0 ASSESSMENT AND CONCLUSION**

- 7.1 No objections have been received as a result of consultations.
- 7.2 I am satisfied that the proposed diversion will not prove to be substantially less convenient to use compared to the existing definitive route and the diversion and associated repair works will allow the creation of a more accessible and sustainable route which will provide better long term access.
- 7.3 I therefore conclude that the proposed diversion passes the legal tests set out in Section 119 of the Highways Act 1980 and, if Members approve the recommendation in this report, the order should be made in the interests of the landowner.

**Angela Jones**  
**Executive Director – Economy and Infrastructure**  
**March 2020**

## **APPENDICES**

- 1**     *Plan showing proposed diversion*  
**2**     *Location plan*

## **IMPLICATIONS**

Staffing: Nil  
Financial: Nil  
Electoral Division: Belle Vue – Christine Bowditch

## **PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS** *[Including Local Committees]*

*No relevant decisions*

## **CONSIDERATION BY OVERVIEW AND SCRUTINY**

*Not considered by Overview and Scrutiny*

## **BACKGROUND PAPERS**

*No background papers.*

Contact: Geoff Fewkes, Countryside Access Officer  
Email: [geoff.fewkes@cumbria.gov.uk](mailto:geoff.fewkes@cumbria.gov.uk)