WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53
APPLICATION TO ADD PUBLIC RIGHTS OF WAY AT
SUNSTONES GARAGE IN THE PARISH OF BROUGHTON
MOOR: DISTRICT OF ALLERDALE

1.0 EXECUTIVE SUMMARY
1.1 An application has been received to add a section of public footpath at Sunstones, Broughton Moor in the Parish of Broughton Moor to the County Council’s Definitive Map and Statement of Public Rights of Way. The plan at Appendix A shows the path to be added.

1.2 The purpose of this report is to present the Committee with the evidence regarding the use of the route, and for a decision to be made whether to proceed with the next stage of the process by making a legal order.

2.0 POLICY POSITION, BUDGETARY AND EQUALITY IMPLICATIONS, AND LINKS TO CORPORATE STRATEGY
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 This matter is a decision making process of a quasi-judicial nature. There should be no policy or political consideration given and any potential financial implications should be ignored. It is merely a matter of weighing the strength of evidence and if that evidence is sufficient to meet the burden of proof, then the legal framework must be applied to the evidence.
3.0 **RECOMMENDATION**

3.1 *The Committee authorises the Corporate Director, Resources and Transformation to make an order under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the effect of which, if confirmed, would be to add a section of public footpath at Sunstones Garage, Broughton Moor in the parish of Broughton Moor as shown A-B-C-D-E on the plan at Appendix A to the County Council’s Definitive Map and Statement of Public Rights of Way.*

3.2 *If there are no objections to the made order the Committee authorise the Corporate Director, Resources and Transformation to confirm the order.*

4.0 **BACKGROUND**

4.1 An application was received in November 2016 to add a section of public footpath as shown A-B-C-D-E on the plan at Appendix A to the County Council’s Definitive Map and Statement of Public Rights of Way.

4.2 The application is accompanied by 15 rights of way evidence forms from local people claiming to have regularly used the route on a daily basis on foot for a period of years ranging from 15 to 60 years. (A summary of the user evidence is attached as Appendix B).

4.3 The user evidence as shown in Appendix B raises a presumption of dedication by the landowners concerned of a public right of way on foot having taken place pursuant to Section 31 Highways Act 1980.

**DETAIL**

4.4 The path, subject of this application, is situated off Seaton Road alongside the former Sunstones Garage, Broughton Moor in the parish of Broughton Moor and forms part of the access drive up the property Sunstones before leading off to the left into a wooded area.

4.5 Local people claim to have used the route as of right, without challenge and without interruption believing it to be the definitive route of public footpath no 219014 for many years until 2016 when a new landowner installed a gate and posted a notice preventing access.

4.6 It would appear that the very nearby path 219014 was informally moved in 1969 to the location of the claimed path when planning permission was granted for a garage and petrol filling station to be developed over path 219014.
CONSULTATIONS

4.7 County Councillor Keith Little the local councillor for the area has been consulted but no response has been received.

4.8 The statutory undertakers have been consulted. Further, the usual prescribed organisations have been consulted:

Allerdale Borough Council – no response received
Ramblers – no response received
Byways and Bridleways Association – no response received
Open Spaces Society – no response received
Local Ramblers Representative – no response received
Cyclists' Touring Club – no response received
British Driving Society – no response received
Auto Cycle Union – no response received
Broughton Moor Parish Council – no response received

Cumbria and Lakes Local Access Forum – CALLAF would have no grounds to object and would support the application which would appear to be a more appropriate route than the current obstructed definitive route.

4.9 One of the affected landowners has submitted an objection to the claimed path on the basis that there is no public right of way along the access drive to the property Sunstones.

5.0 LEGAL POSITION

5.1 The County Council has a statutory duty to keep the Definitive Map and Statement of Rights of Way under continuous review (section 53 of the Wildlife & Countryside Act 1981).

5.2 If evidence is discovered by the authority that a right of way subsists or is reasonably alleged to subsist which is not shown on the map and statement, the County Council shall make an order modifying the map and statement adding the claimed right of way to the map.

5.3 An application for a modification order involves a two-stage process whereby the County Council makes the order and then, if appropriate, confirms the order if there are no outstanding objections to it or, where there are such objections, the order can only be confirmed by the Secretary of State.
5.4 The County Council has a duty to investigate an application, to consider all relevant evidence available to it, and then to reach a conclusion. It must, therefore, evaluate the application. All the evidence must be weighed in the balance and any relevant legal principles applied to it.

5.5 The application as submitted is made pursuant to section 53(3)(c)(i) Wildlife and Countryside Act 1981 on the ground that there has been a discovery by the County Council “…..of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path.”

5.6 In deciding whether a right of way subsists, it is necessary for the evidence to establish that, on a balance of probabilities, the right of way subsists. In deciding whether it is reasonable to allege that a right of way subsists, it is merely necessary for it to be shown that a reasonable person, having considered all the relevant available evidence, could reasonably allege that a right of way subsists. Therefore, the evidence necessary to establish that a right of way does in fact subsist is greater than that which is necessary to establish that a right of way is reasonably alleged to subsist.

5.7 At the confirmation stage of an order, the only test to be applied is the higher one, namely whether a right of way has been shown to subsist on the balance of probabilities.

5.8 Section 31 of the Highways Act 1980 states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention to dedicate.

5.9 Under paragraph 2.1 (g)(vii) Part 2 G of the County Council’s Constitution, the Committee has the duty to keep a Definitive Map and Statement under review.

6.0 OPTIONS

6.1 The Committee may accept or reject the recommendation in whole or in part.

6.2 If the recommendation is accepted any objector will have an opportunity on advertising of the Order to submit a further objection whereupon the matter will be referred to the Secretary of State for decision (probably after a Public Inquiry or other hearing).

6.3 If the recommendation is rejected the applicants have the option of appealing against the decision to the Planning Inspectorate.
7.0 ASSESSMENT

7.1 In order to negate an application a landowner or objector needs to provide evidence that the claimed route has not been walked. For example that previous landowners stopped the public using the routes by putting up notices or turning people away or maybe locked gates or obstructions were present which meant that the public could not physically walk along them as claimed. No evidence has been submitted by the current landowner objecting to the application to show that the public have been prevented from using this route or that they have been informed that this route is not a public right of way until recently when he purchased the property and erected a gate, posted notices on it advising members of the public there is no right of way and blocking the access to the footpath where it leaves his property (subsequently cleared). This is not considered sufficient to demonstrate that the claimed route has not been walked.

7.2 The application is accompanied by 15 rights of way evidence forms from local people claiming to have regularly used the route on a daily basis on foot for a period of years ranging from 15 to 60 years. It is considered that this evidence is sufficient to demonstrate the route has been used and support the making of an order.

8.0 CONCLUSION

8.1 Based upon the evidence that has so far come forward, officers are of the view a public right of way over this route is reasonably alleged to subsist, and the evidence brought forward to rebut the claim is insufficient and the recommendation to make an Order should be approved.

Stuart Perigo
Interim Manager of Development Control and Countryside Management, Regulatory Services

June 2017

APPENDICES

A Plan showing proposed path to be added
B Analysis of User Evidence

IMPLICATIONS

Staffing: Nil
Financial: Nil
Electoral Division: Maryport South – Keith Little

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS
[including Local Committees]

No previous relevant decisions

CONSIDERATION BY OVERVIEW AND SCRUTINY

Not considered by Overview and Scrutiny.

BACKGROUND PAPERS

No background papers

Contact: Sandra Pattinson, Countryside Access Officer - Tel: 07920711254
E-mail: sandra.pattinson@cumbria.gov.uk
## MODIFICATION OF FOOTPATH NO 219014 PARISH OF BROUGHTON MOOR

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