HIGHWAYS ACT 1980 SECTION 118 – APPLICATION TO EXTINGUISH PUBLIC FOOTPATH NO 302151 IN THE PARISH OF ALSTON MOOR: DISTRICT OF EDEN

1.0 EXECUTIVE SUMMARY

1.1 The County Council proposes to extinguish public footpath no 302151 at Haggs Bank in the parish of Alston Moor District of Eden.

1.2 This can be done under Section 118 of the Highways Act 1980 and consultations have taken place so as to assist members to reach a decision as to whether or not an order should be made.

1.3 The plan at Appendix A shows the proposal and a location plan is included at Appendix B.

2.0 POLICY POSITION, BUDGETARY AND EQUALITY IMPLICATIONATIONS, 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 extinguished 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)(ii) of the County Council’s Constitution, an order be made under Section 118 of the Highways Act 1980 to extinguish public footpath no 302151 in the parish of Alston Moor shown A-B as shown on the plan at Appendix A and that all necessary action be taken to confirm the order.*

4.0 **BACKGROUND**

4.1 The route of public footpath no 302151 passes through the curtilage of the property at Haggs Bank before ascending steep rough pasture that is being developed as a camping area.

4.2 The applicant landowner has applied to extinguish of the whole length of the footpath for the reasons of security and safety.

4.3 All costs associated with processing of the order will be paid by the applicant landowner.

**Consultation**

4.4 The statutory undertakers have been consulted and none are affected.

4.5 A consultation has been carried out with

Alston Moor Parish Council – no response received

Carlisle City Council – no response received

Ramblers – no response received

Local Ramblers representative – no objections

Cumbria and Lakes Joint Local Access Forum (CALJLAF) – In a formal letter of response dated 30 July 2020 the CALJLAF commented that “the proposal to extinguish FP 302151 is not supported by the CALJLAF as the alternative existing routes would be far less convenient, direct and user-friendly than that created by a diverted FP 302151 passing through the camping ground.

The CALJLAF propose that the diversion of this footpath is approved, and the path retained.” However, there is no application to divert the footpath.

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 – The applicant landowner owns all the land affected.

4.7 The local member for Alston and East Fellside, Claire Driver has been consulted and no response received.

5.0 **LEGAL IMPLICATIONS**

5.1 Under Section 118 of the Highways Act 1980 (the Act) where it appears to a council as respects a footpath or bridleway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way. An order under section 118 of the Act is referred to as a ‘public path extinguishment order’.

5.2 Section 118(2) of the Act, provides that the Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 of the Act as applied by section 121(2) of the Act.

5.3 It would appear that, even where an authority has come to a conclusion that it is expedient to make such an order, it still has a discretion as to whether or not to make the order, or having made the order whether to refer it to the Secretary of State in the face of objections.

5.4 Under Section 118(6) of the Act, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

5.5 Under Section 118(6A) of the 1980 Highways Act, the County Council’s Rights of Way Improvement Plan has been considered and there is no relevant material provision.

5.6 Under Part 2G paragraph 2.1(g) (ii) of the Constitution, the Committee has power to extinguish 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 One adverse comment has been received from the CALJLAF as a result of the informal consultation. This centres on a supposed application to divert the path within the boundaries of the pasture and forms the basis for their response. However, no such diversion application has been discussed or submitted to either the County Council or Eden District Council (as planning authority).

7.2 The consultees were specifically asked to comment on the proposal to extinguish the path and the legal tests that the path was not needed for public use.

7.3 The pasture crossed by footpath no 302151 is bordered on three sides by other public footpaths and a public highway on the fourth, so the extinguishment of this short length of footpath would not detract from the convenience or enjoyment of the footpath network in the locale. The alternative paths are of a similar or better condition than the path to be extinguished and more legible on the ground.

7.4 In conclusion the proposed extinguishment meets the legal tests set out in Section 118 of the Act and, if Members approve the recommendation in this report, the order will be made in the interests of the landowner.

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

**APPENDICES**

**A**  
*Plan showing proposed extinguishment*

**B**  
*Location plan*

**IMPLICATIONS**

Staffing: Nil  
Financial: Nil  
Electoral Division: Alston and East Fellside – Claire Driver
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

*Cumbria Countryside Access Strategy.*

Contact: Email: Geoff Fewkes countryside.access@cumbria.gov.uk
Location Plan for Hagg Bank
Nenthead

Area covered by Order Plan