HIGHWAYS ACT 1980 SECTION 119 APPLICATION TO DIVERT PUBLIC FOOTPATH NO 105014 PARISH OF BRAMPTON

1.0 EXECUTIVE SUMMARY

1.1 An application has been received by the County Council to divert a section of public footpath no 105014 at Unity Farm in the parish of Brampton.

1.2 This can be done under Section 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 A shows the proposal and a location plan is included at Appendix B.

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 County Council’s Constitution, an order be made under Section 119 of the Highways Act 1980 to divert a section of public footpath no 105014 in the parish of Brampton A-B to a new route A-C-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 current recorded route of the footpath crosses rough pasture to the west of Unity Farm before passing through the front garden of the adjacent Unity Cottage.

4.2 The applicant landowner has applied to divert the footpath for reasons of privacy and security.

4.3 The proposed new footpath will follow the existing surfaced farm and cottage access track before re-joining the existing natural surface footpath to the south of the cottage via an existing field gate.

4.4 The existing gate at point C will be improved to conform with current British Standard 5709 for improved accessibility.

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

**Consultation**

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

4.7 A consultation has been carried out with

- Carlisle City Council – no response received
- Ramblers – no response received
- Local Ramblers representative – no response received
- Cumbria and Lakes Joint Local Access Forum (CALJLAF) – In a formal letter of response dated 21 September 2020 the Forum concluded that the proposal will formalise a route already in use, provides a route that is easier to use than the original line and with no loss of convenience or amenity. The CALJLAF supports the proposal.
- 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
Cumbria Bridleways Society – no response received
Auto Cycle Union – no response received
Brampton Parish Council – no response received

4.8 There is currently no local County Council member for Brampton.

4.9 The Applicant owns all the land affected by the proposed diversion.

5.0 **LEGAL IMPLICATIONS**

5.1 Under Section 119(1) of the Highways Act 1980 (*the Act*), the County Council 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) of the Act) and which is substantially as convenient to the public.

5.3 Further, under Section 119(6) of the Act, if no objections are received against the made order, the Council 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:

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

(b) the coming into operation of the order would have as respects other land served by the existing right of way; and

(c) 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 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 the consultations.

7.2 The new route will utilise the existing access track to the farm and cottage at Unity and create an alternative which negates the need to pass over rough grazed land and through the garden of Unity Cottage. In doing so it will provide an easier more logical direct line that will be accessible to a larger proportion of the public.

7.3 It is concluded that the proposed diversion meets the legal tests set out in Section 119 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 diversion*  
B  *Location plan*

**IMPLICATIONS**

Staffing: Nil  
Financial: Nil  
Electoral Division: Brampton and Gilsland - vacancy

**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: Geoff Fewkes, Countryside Access Officer  
Email: geoff.fewkes@cumbria.gov.uk