HIGHWAYS ACT 1980 SECTION 119 APPLICATION TO 
DIVERT PUBLIC FOOTPATH NO 540005 PARISH OF KIRKBY LONSDALE

1.0 EXECUTIVE SUMMARY

1.1 An application has been received by the County Council to divert a section of public footpath no 540005 at Queen Elizabeth School in the parish of Kirkby Lonsdale.

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, Appendix B depicts the proposal in relation to the present site layout and a location plan is included at Appendix C.

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 540005 in the parish of Kirkby Lonsdale A-B to a new route A-C-D-E-F-G-H-I-J-K-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 application for the proposed diversion order has been made by the Developer and is in the interest of the landowner.

4.2 The present legally recorded route of the footpath was already obstructed by a building at the school before the recent development commenced. This new development further obstructed the footpath with the introduction of a car park to the south of the existing school building. An access road was created over the historically walked line which further affected public usage (see plan at Appendix B).

4.3 Despite responses to the planning application recommending the footpath be diverted under Section 257 of the Town and Country Planning Act 1990 to rectify the historic obstruction, no diversion application was submitted.

4.4 The proposed new footpath will avoid the access road and car park by taking a slightly more circuitous but safer traffic-free route following well surfaced pedestrian areas within the new campus development.

4.5 A new ramp between points D-L-M-N-O provides a wheelchair accessible route between the two levels in the grounds, whilst a short flight of steps (D-E-F) provides a more direct route for the more mobile.

4.6 All costs associated with processing of the diversion order will be paid by the Applicant Developer.

**Consultation**

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

4.8 A consultation has been carried out with

South Lakeland District 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 30 July 2020 the Forum concluded that “the extent to which the legal tests for the diversion are met is not entirely certain. The
footpath is de facto already diverted, and the original footpath can no longer be walked. It is pragmatic to accept this diversion.”

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

Kirkby Lonsdale Council – no response received

4.9 The local member Nick Cotton has been consulted and, in an email dated 24 June 2020, stated that he was “happy with the diversion.”

4.10 The landowner has consented, in writing, to 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, 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:-

(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

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 To avoid vehicular traffic the proposed new section of footpath follows a slightly longer route to provide ramped access between the two levels of the campus. The short flights of steps provide a more direct route for the majority of users.

7.3 On balance, the surface improvements and safer provisions for the user is not substantially less convenient as the existing route and the increased accessibility with result in no loss of enjoyment to a wider sector of the public.

7.4 In conclusion, 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  Plan showing proposed diversion in relation to the present site layout
C  Location plan

IMPLICATIONS

Staffing: Nil
Financial: Nil
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.*

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