EXECUTIVE SUMMARY

1.1 An application has been received by the County Council to divert a section of public footpath no 336011 at Newbiggin Road in the parish of Kirkby Thore District of Eden.

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 an order should be made.

1.3 The plan at Appendix A shows the diversion proposal, Appendix B depicts the proposal in relation to proposed development and a location plan is included at Appendix C.

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 336011 in the parish of Kirkby Thore shown A-B to a new route A-C-D-E 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 section of public footpath no 336011 at Newbiggin Road to be diverted A-B runs across open pastureland to meet the highway opposite the village school.

4.2 The Applicant Developer wishes to divert the path to accommodate a small housing development for which planning permission is awaited from Eden District Council (see plan at Appendix B).

4.3 A diversion order was considered as part of the planning application but the only suitable route within the red line boundary would have taken the footpath along estate footways which is contrary to Rights of Way Guidance.

4.4 A diversion under Section 119 of the Highways Act 1980 ensures that the proposed route will keep the path within an open field and help to preserve its rural nature.

4.5 As part of the proposal, a kissing gate compliant to current British Standard will be installed at Point D, along with a short section of compacted stone surfacing from the gate across the verge to tie in with the surfaced lane (footpath no 336017) at Point E.

4.6 Additionally, the Applicant Developer has indicated a desire to provide access between the development and footpath at Point C. Whilst this is outside the scope of the diversion application it will add additional value and convenience to local access routes, albeit permissive.

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

Consultation

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

4.9 A consultation has been carried out with

Kirkby Thore Parish Council – In an email dated 17 November 2020 the parish council commented as follows: “After walking the route and much consideration the parish council has concluded that it does not wish to comment or make observation on this change.”
Eden District Council – no response received

Ramblers – no response received

Local Ramblers representative – in a response received by an email dated 24 September 2020 the Local Ramblers Association noted that at the time of consultation planning permission had not been granted. Unless the site is developed, they would wish to see the path retained on its present alignment and would object to an order if made before the grant of planning permission.

Cumbria and Lakes Joint Local Access Forum (CALJLAF) – in a formal letter of response dated 26 October 2020 the CALJLAF gave their support to this Order

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 affected landowner has provided written consent to the diversion

4.7 The local member for David Whipp, Penrith Rural has been consulted but no response received.

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 County 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

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 I am satisfied that the proposed diversion will not prove to be substantially
less convenient to use as it will cross land of similar terrain and gradient
compared to existing definitive route. The diversion is, in my opinion,
relatively modest and the connections to the rest of the network are not
affected.

7.2 Whilst no objections have been received as a result of consultations the
Local Ramblers Association make a valid point concerning making an order
before planning permission is granted, and it is one that I fully agree with.
The Order will only be made if planning permission is granted.

7.3 At the time of writing it was expected that Eden District Council would have
decided favourably by the time of this Committee Meeting and thus that
concern will be addressed.

7.4 The proposal incorporates a British Standard 5709 compliant gate and is
thus accessible and in accordance with our Countryside Access Strategy
(Rights of Way Improvement Plan).

7.5 In conclusion, the proposed diversion will not prove to be substantially less
convenient to use compared to existing definitive route. The proposed
diversion passes 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.
APPENDICES

A  Plan showing proposed diversion
B  Plan showing proposed diversion in relation to the development
C  Location plan

IMPLICATIONS

Staffing: Nil
Financial: Nil
Electoral Division: Penrith Rural – David Whipp

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 Officer
geoff.fewkes@cumbria.gov.uk
Appendix A

Legend
- Footpath to be Extinguished
- Footpath to be Created
- Routes to remain

Scale 1:1500 @ A4

Highways Act 1980 Section 119 and Wildlife and Countryside Act Section 53
Public Footpath 336011 Diversion Order and Public Path Modification Order
Newbiggin Road, Kirkby Thore

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