HIGHWAYS ACT 1980 SECTION 119 APPLICATION TO DIVERT PUBLIC BRIDLEWAY NO 567008 PARISH OF SCALTHWAITERIGG

1.0 EXECUTIVE SUMMARY

1.1 The County Council has received an application to divert a section of public bridleway no 567008 at Laverock Wood in the parish of Scalthwaiterigg.

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 bridleway 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 bridleway no 567008 in the parish of Scalthwaiterigg A-B to a new route A-C-D 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 and in the interests of the applicant landowner.

4.2 The current route of the bridleway (A-B) runs over a private sealed surface driveway and within the curtilage of a domestic dwelling. The applicant wishes to divert the right of way for reasons of security and privacy.

4.3 The proposed new bridleway will follow a largely parallel alignment through adjacent woodland and outside the curtilage of the applicant’s dwelling. The route will utilise a newly constructed 2.4 metre wide compacted aggregate surfaced track for the entire length between Points C and D.

4.4 A new BS5709 compliant gate will be installed at Point C.

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

South Lakeland District Council – no response received

Ramblers – no response received

Local Ramblers representative – in an email dated 1 June 2020 the Kendal Ramblers Association stated that they support the diversion

Cumbria and Lakes Joint Local Access Forum (CALJLAF) – In a response dated 19 June 2020 the Forum indicated that they support the general principle of the diversion of the bridleway from A-B in front of the house. However, the diversion C-D is not supported, largely due to the potential danger at D where it would join the road on a blind bend. The Forum considers that diversion C-D does not meet the legal tests as it is less convenient; much less enjoyable and will have a deleterious effect on the land

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
Scalthwaiterigg Parish Council – no response received

4.8 The local member Stan Collins has been consulted and has made no formal response.

4.9 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 bridleway 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 Following the comments submitted by the CALJLAF, the site was revisited to ascertain the vision splays at the roadside termini of both existing and proposed routes; points B and D respectively:

- Existing terminus (point B) = 22 metres left and 59 metres right
- Proposed terminus (point D) = 40 metres left and 67.5 metres right

The results show a marked improvement in visibility of 18 metres to the left and 8.5 metres to the right.

7.2 Despite the CALJLAF’s comments to the contrary, the proposed diversion is considered to be substantially as convenient as the existing bridleway since it is of similar length, direction, surface provision, gradient, elevation change and accessibility to existing route.

7.3 The proposal further improves access by the incorporating of an accessible British Standard gate in line with the County Council's Countryside Access Strategy (Rights of Way Improvement Plan).

7.4 Additionally, as the proposal seeks to remove the public right of way from within the curtilage of a private dwelling to a virtually parallel alignment following the edge of adjacent mature woodland. On assessment, no loss of enjoyment would occur.

7.5 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: Upper Kent – Stanley Bernard Collins

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
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Appendix B

Location Plan for Laverock Wood Meal Bank

Scale 1:20,000 @ A4

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