HIGHWAYS ACT 1980 SECTION 119A – APPLICATION TO DIVERT UNRECORDED PUBLIC FOOTPATH AT BAYLEY/BAILLEY LANE GRANGE OVER SANDS: DISTRICT OF SOUTH LAKELAND

1.0 EXECUTIVE SUMMARY

1.1 The County Council has received an application to divert the unrecorded public footpath that passes over the railway at Bayley/Bailey Lane, Grange Over Sands to an alternative route that incorporates the nearby railway underpass.

1.2 This can be done under Sections 119A of the Highways Act 1980 and now that a Section 119A(8) agreement (Appendix B) has been entered into with the applicant members can decide whether or not a diversion order should be made.

1.3 The plan at Appendix A shows the proposals and photos of the location are 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 ensure places in Cumbria are well-connected and thriving”.

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 in the interests of public safety” 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, the committee approve the making of the legal order to divert Bayley/Bailey pedestrian level crossing under Section 119A of the Highways Act 1980.*

3.2 *That, pursuant to the power set out at Part 2G paragraph 2.1(g)(iii) of the Council’s Constitution, an order be made under Section 119A of the Highways Act 1980 to divert the unrecorded public footpath in the parish of Grange-Over-Sands as shown A-B to a new route C-D-E-F-G-H-I-J-K-L-M-N-O-P-Q-R-S-T-U-V-W-X-Y-B on the plan at Appendix A and that all necessary action be taken to confirm the order.*

4.0 **BACKGROUND**

4.1 On the 11th July 2018 this Committee rejected the recommendation to refuse an application to make an order to divert the unrecorded public footpath that passes over the railway at Bayley/Bailey Lane, Grange Over Sands to an alternative route that incorporates the nearby railway underpass as shown on plan at Appendix A.

4.2 Members were advised that they could not resolve to make an order until a Section 119A (8) Agreement had been signed by Network Rail and Cumbria County Council. This form of agreement requires the applicant to pay any compensation or expenses that may arise as a result of processing the legal order (see 5.5 below). This Agreement has now been signed by the appropriate parties (see appendix B) and the County Council can now make a legal order to divert the unrecorded public footpath that passes over the railway at Bayley/Bailey Lane, Grange Over Sands to an alternative route that incorporates the nearby railway underpass (see plan at Appendix A).

4.3 The new route will pass along a section of the existing Grange promenade shown R-W on the plan at Appendix A which is supported by the existing retaining sea wall. Structures supporting public highways are normally the default maintenance responsibility of Highway Authorities. However because the applicant is Network Rail I have proposed a clause to limit the County Council’s liability:

> “The operator of the railway crossed by the footpath described in paragraph 1 shall maintain the surface and all associated overbridges and supporting structures, on the part shown C-D-E-F-G-H-I-J-K-L-M-N-O-P-Q-R-S-T-U-V-W-X-Y-B, including the underpass between Q-R and retaining sea wall between R-W, on the said map of the footpath created by this order.”

With this wording I believe the probability is very low that Cumbria County Council will become responsible for the maintenance of this section of the sea wall.
5.0 **LEGAL IMPLICATIONS**

5.1 Under Section 119A (1) of the Highways Act 1980 a footpath which crosses a railway should be diverted where it appears to a council expedient in the interests of safety of members of the public using it.

5.2 A council shall not confirm such an order as an unopposed order, unless they are satisfied that it is expedient to do so having regard to all the circumstances, and in particular to –

(a) whether it is reasonably practicable to make the crossing safe for use by the public, and

(b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.

5.3 A rail crossing diversion order (119A) shall not alter a point of termination of a path or way diverted under the order –

(a) if that point is not on a highway over which there subsists a like right of way (whether or not other rights of way also subsist over it), or

(b) (where it is on such a highway) otherwise than to another point which is on the same highway or another such highway connected with it.

5.4 Under S.119A (6) A rail crossing diversion order may make provision requiring the operator of the railway to maintain all or part of the footpath created by the order.

5.5 Under S.119A (8) Before determining to make a rail crossing diversion order on the representations of the operator of the railway crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—

(a) any compensation which may become payable under section 28 above as applied by section 121(2) below;

(b) any expenses which the council may incur in connection with the erection or maintenance of barriers and signs;

(c) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use by the public;

(d) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (11) below

5.6 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 the recommendation or take a different view to officers and resolve not to make the order.

6.2 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.

6.3 If the recommendation is not accepted by Members and an order is not made the applicant has an opportunity to request that the Secretary of State make the order. The Planning Inspectorate acting for the Secretary of State will either refuse the request or make the legal order.

In the situation where the Secretary of State makes the legal order and receives objections a planning Inspector will then determine the matter following a public inquiry, public hearing or after a period of written representations dependent on the most appropriate method in the circumstances. Experience shows that in cases such as this it is likely that a public inquiry will be held.

7.0 ASSESSMENT

7.1 This committee, at its meeting on 11 July 2018, resolved that the recommendation that the application to divert Bayley/Bailey pedestrian level crossing under Section 119A of the Highways Act 1980 be rejected on the grounds that the evidence so far provided does not support a recommendation that it is expedient in the interests of safety of members of the public to divert the aforementioned crossing be rejected but noted that a further report would come to the Committee once the Section 119(A) Agreement had been. This has now been agreed.

7.2 The future maintenance liability of all elements of the proposed diversion will be the full responsibility of the rail authority including the relevant section of the retaining sea wall.

8.0 CONCLUSION

8.1 The applicant has now entered into a Highways Act 1980 S.119A (8) Agreement (see Appendix B) and this allows the County Council to make the legal order to divert the unrecorded public right of way as shown on plan at Appendix A.

Angela Jones
Acting Executive Director – Economy and Infrastructure
July 2019
APPENDICES

A  Plan showing proposed diversion
B  1980 Highways Act Section 119A (8) Agreement
C  Photos of location

IMPLICATIONS

Staffing: Nil
Financial: Nil
Electoral Division: Grange – Bill Wearing

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS
[including Local Committees]

11th July 2018 Development Control and Regulation meeting this Committee rejected the recommendation to reject the application to make an order to divert the unrecorded public footpath that passes over the railway at Bayley/Bailey Lane, Grange Over Sands to an alternative route that incorporates the nearby railway underpass see Appendix A.

CONSIDERATION BY OVERVIEW AND SCRUTINY

Not considered by Overview and Scrutiny

BACKGROUND PAPERS

No background papers.

Contact: Andy Sims, Countryside Access Officer
Email: andy.sims@cumbria.gov.uk
Appendix B

This agreement is dated [DATE]

PARTIES

(1) Cumbria County Council of 117 Botchergate, Carlisle CA1 1RD (Council)

(2) Network Rail Infrastructure Limited (company number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN (Network Rail)

BACKGROUND

(A) Network Rail has made an application to the Council to vary the route of the public footpath over Bailey Lane Public Footpath Level Crossing in the town of Grange-over-Sands which will enable them to close the crossing.

(B) The Council is the Highways authority for the area within which the New Footpath is situated.

(C) Network Rail is the railway operator of the rail network over which the Old Footpath currently traverses.

(D) At a meeting of the Development Control and Regulation Committee (DCR) of the Council it was resolved that a Rail Crossing Diversion Order be made under S119A of the Highways Act 1980 subject to Network Rail entering into this agreement.

AGREED TERMS

1. INTERPRETATION
   The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Application: The application made by Network Rail under Section 119A of the Highways Act 1980 to have the line of the Old Footpath diverted onto the line of the New Footpath by way of a Diversion Order

Commencement Date: The date of this agreement

Rail Crossing Diversion Order: The order made if the determination of the Application is in Network Rail’s favour

Old Footpath: is the footpath over the level crossing as marked with a thick solid black line between points A and B on plan at Appendix A

New Footpath is the footpath as marked with a thick dashed black line between points C-D-E-F-G-H-I-J-K-L-M-N-O-P-Q-R-S-T-U-V-W-X-Y-Z on plan at Appendix A
1.2 Clause headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.11 A reference to writing or written includes fax and email.

1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.13 References to a document in agreed form are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.

1.14 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.15 References to clauses are to the clauses of this agreement

2. COMMENCEMENT

This agreement shall commence on the date when it has been signed by all the parties (Commencement Date).

3. ASSIGNMENT AND OTHER DEALINGS

This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

4. VARIATION
No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

5. WAIVER (SHORT FORM)

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

6. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

7. SEVERANCE

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

8. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

9. The addresses for service of notices are:

(a) Cumbria County Council

(i) Address: 117 Botchergate, Carlisle, CA1 1RD

(ii) For the attention of: Development Control Manager

(b) Network Rail

(i) Address: Square One, 4 Travis Street, Manchester, M1 2NY

(ii) For the attention of: Ann Buckley

10. THIRD PARTY RIGHTS

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

11. GOVERNING LAW
This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

12. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

13. NETWORK RAIL COVENANTS

Network Rail covenants with the Council to observe and perform the covenants, restrictions and obligations reserved to them which are that Network Rail will defray in full and without qualification:

a) any compensation which may become payable under section 28 of the Highways Act 1980 as applied by section 121(2) of that act

b) any expenses which the Council may incur in connection with the erection or maintenance of barriers and signs on the Old or New Footpaths

c) any expenses which the Council may incur in bringing the site of the New Footpath or way into fit condition for the use of the public

which may occur as a result of the making of the Diversion Order.

This agreement has been entered into on the date stated at the beginning of it.

Signed by for and on behalf of Cumbria County Council

Signed by CAROLE BAYLISS for and on behalf of NETWORK RAIL INFRASTRUCTURE LIMITED

Director