1.0 EXECUTIVE SUMMARY

1.1 An application has been received to modify a section of the public footpath no 126016 near Low Plains in the parish of Nicholforest on the Definitive Map.

1.2 A plan (Appendix A) shows the route of the path subject to the application and a location plan is also attached at Appendix C.

1.3 The purpose of this report is to present Members with the evidence regarding the route, and for a decision to be made whether to proceed with the next stage of the process by making a legal order.

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 This matter is a decision making process of a quasi-judicial nature. There should be no policy or political consideration given and any potential financial implication should be ignored. It is merely a matter of weighing the strength of evidence and if that evidence is sufficient to meet the burden of proof, then the legal framework must be applied to the evidence.
3.0 **RECOMMENDATION**

3.1 *It is recommended that the application to modify the route of public footpath no 126016 in the parish of Nicholforest be rejected.*

4.0 **BACKGROUND**

4.1 An application under Section 53 of the Wildlife and Countryside Act 1981 must be valid. A valid application must contain

- A completed Application Form;
- A map to a scale of not less than 1:25000 showing the rights the rights of way subject of the application;
- Copies of the supporting evidence, including statements of witnesses;

4.2 If an application is considered valid it is added to the statutory list of outstanding applications in accordance with Section 53(5) of the 1981 Act and can only be removed following a formal decision by Cumbria County Council as the surveying authority.

4.3 In determining these applications our role is to consider whether or not the available evidence (including any evidence submitted by objectors) supports the claim made in the application. Normally this would involve assessing historical documentary evidence and evidence that the public has used a route as of right (without force, secrecy or permission) and without interruption for a period of 20 years or more. It is also important to establish that the landowner during that period has not sought to prevent the public use of the route.

4.4 The application submitted asserted that the path was in the wrong location and that it had never passed through the curtilage of the property Low Plains. This assertion was supported by a small number of letters from local people stating that they had never walked the definitive line at this property.

4.5 However, this is not enough to prove that a mistake was made when the Definitive Map and Statement was produced. When this happens our normal practice is to request further evidence. Unfortunately, the applicant has been unable to provide any evidence that a mistake was made and that the definitive map is incorrect.

4.6 The route of the right of way remains as claimed in the parish surveys undertaken in the early 1950s and depicted on the draft definitive map and statement and detailed in the original parish schedule submitted by the parish council back in the early 1950s.
At Appendix B is an extract from the Definitive map and Statement in respect of public footpath no 126016

**LEGAL POSITION**

5.1 In considering the application to amend the Definitive Map under Section 53 (3)(c)(iii) of the Wildlife and Countryside at 1981, Members must consider all the evidence available to them and must be satisfied that the evidence shows on the balance of probabilities that the map and statement should be modified.

5.2 The leading case in this area is that of Trevelyan v Secretary of State for the Environment, Transport and the Regions [2001] EWCA Civ 266. The Court of Appeal decided that clear and compelling evidence of a mistake would be needed to set aside the presumption that the Definitive Map and Statement of Public Rights of Way had been correctly prepared and are a true record. The procedure whereby the Definitive Map was originally drawn up was lengthy and involved, and opportunities were given for those concerned to object if they thought that the Definitive Map had been incorrectly drawn.

5.3 The evidence needs to fulfil certain stringent requirements. These are that:-

- The evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made (Burrows 2004).

- The evidence must be of sufficient substance to displace the presumption that the definitive map is correct.

- The evidence must be cogent (clear, logical, and convincing).

5.4 Under paragraph 2.1 (g)(vii) Part 2 G of the Constitution the County Council has a statutory duty to keep the Definitive Map and Statement of Rights of Way under continuous review (section 53 of the Wildlife & Countryside Act 1981).

**CONSULTATIONS**

6.1 No consultation has taken place as the evidence threshold has not been met to satisfy processing the application to this stage.

**OPTIONS**

7.1 The Committee may accept or reject the recommendation in whole or in part.

7.2 If the recommendation is rejected the applications will remain on the list of outstanding orders and dealt with in accordance with the current policy criteria.
7.3 If the recommendation is accepted the individual applicants have the option of appealing against the decision to the Planning Inspectorate.

8.0 **ANALYSIS AND CONCLUSION**

8.1 The County Council has a statutory duty to keep the Definitive Map and Statement of Rights of Way under continuous review (s.53 Wildlife & Countryside Act 1981) and must process any claim that a path is incorrectly recorded on the legal record.

8.2 The path through the curtilage of Low Plains was obstructed by the construction of farm outbuildings, which took place during the 1960s. A recent planning application for demolition of the outbuildings and construction of a new dwelling brought the issue to the fore and the applicant landowner has taken the opportunity to rectify the matter by diverting the footpath under Section 119 of the Highway Act 1980.

8.3 In this case I conclude that the applicant has failed to satisfy the strict burden of proof that the Definitive Map and Statement are incorrect and the application should be rejected.

Angela Jones
Acting Executive Director – Economy and Infrastructure
July 2019

**APPENDICES**

* A – Plan showing the section of path to be modified
* B – Extract from Definitive Map and Statement for footpath no 126016
* C – Location Plan

**IMPLICATIONS**

- Staffing: Nil
- Financial: Nil
- Electoral Division(s): Longtown – Val Tarbitt

**PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS**
*[including Local Committees]*

*No previous relevant decisions.*

**CONSIDERATION BY OVERVIEW AND SCRUTINY**

*Not considered by Overview and Scrutiny.*
BACKGROUND PAPERS

No background papers

Contact: Sandra Smith, Countryside Access Officer - Tel: 07920 711254
E-mail: Sandra.smith@cumbria.gov.uk
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<td>APPENDIX B</td>
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**Sheet of Right of Way**

**Appendix B**

- From junction with property 1001 (Arthington of part of property)
- From road at low point
- Planting west of approx. 397 meters to
- Read at book gate
- North of property south of main road
- Approx. 300 meters to
- Another north of property and northerly by road from the east
- Approx. 270 meters to
- Approxi 125 meters to
- South of property
- Approx. 250 meters to
- Planting north of property
- Approx. 10 meters to
- North of property
- From road at low point
- Home of E. W. Crook
- From south of part of property
- From the south of property
- Approx. 22 meters to
- South of property
- Approx. 25 meters to
- Middle point of property
- South of property
- Approx. 2.5 meters to
- From road at low point
- North of property
- From junction with part of property 1001 (Arthington of part of property)