HIGHWAYS ACT 1980 SECTION 119 APPLICATION TO DIVERT PUBLIC FOOTPATH NO 126016 PARISH OF NICHOLFOREST: DISTRICT OF CARLISLE

1.0 EXECUTIVE SUMMARY

1.1 An application has been received to divert a section of public footpath no 126016 in the Parish of Nicholforest.

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 a diversion order should be made.

1.3 The plan at Appendix A shows the proposal.

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” 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 Council’s Constitution, an order be made under Section 119 of the Highways Act 1980 to divert that section of public footpath no 126016 in the parish of Nicholforest as shown A-B to a new route C-B on the plan at Appendix A and that all necessary action be taken to confirm the order.*

4.0 **BACKGROUND**

4.1 The proposed diversion order is in the interests of the landowner.

4.2 The existing definitive route of the path passes through the curtilage of Low Plains before crossing the rough pasture to the rear of the property.

4.3 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.

4.4 The proposed diversion route will utilise a nearby field gate to access the rough pasture and take a direct line to the far field boundary crossing. In doing so it will make the proposed path more logical in its direction and easier to follow for the user. There are no works required to bring the new route into use by the public.

4.5 All costs associated with processing of the diversion order will be paid by the applicant.

**Consultation**

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

4.7 A consultation has been carried out with

Nicholforest Parish Council – has no comment to make on the application

Carlisle City Council – no response received

Ramblers – no response received

Local Ramblers representative – no response

Cumbria and Lakes Local Access Forum (CALLAF) – have no grounds to oppose this retrospective proposal, as it would seem that there would be no loss of amenity and convenience for potential users, the change of roadside access incurring minimal distance and with no reduction of connectivity.

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 – Consent has been received from the affected landowner

4.9 The local member for Longtown, Val Tarbitt has been consulted but has not made a response

5.0 **LEGAL IMPLICATIONS**

5.1 Under Section 119(1) of the Highways Act 1980 we 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) Highways Act 1980) and which is substantially as convenient to the public.

5.3 Further, under Section 119(6) of the Highways Act 1980, 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:-

5.4 The diversion would have on public enjoyment of the path or way as a whole;

5.5 The coming into operation of the order would have as respects other land served by the existing right of way; and

5.6 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.

5.7 Under Section 119(6A)(b) of the 1980 Highways 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.

5.8 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 consultations.

7.2 I am satisfied that the proposed diversion will not prove to be substantially less convenient to use compared to the existing definitive route.

7.3 I conclude that the proposed diversion passes the legal tests set out in Section 119 of the Highways Act 1980 and, if Members approve the recommendation in this report, the order should be made in the interests of the landowner.

Angela Jones
Acting Executive Director – Economy and Infrastructure
July 2019

APPENDICES

A Plan showing proposed diversion
B Location plan

IMPLICATIONS

Staffing: Nil
Financial: Nil
Electoral Division: Longtown – Val Tarbitt

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

No background papers.

Contact: Geoff Fewkes, Countryside Access Officer
Email: geoff.fewkes@cumbria.gov.uk