

DEVELOPMENT CONTROL AND REGULATION COMMITTEE

Meeting date: 15 July 2022

From: Executive Director – Economy and Infrastructure

HIGHWAYS ACT 1980 SECTION 119 APPLICATION TO DIVERT PUBLIC FOOTPATH NO 507010 PARISH OF BURTON IN KENDAL

1.0 EXECUTIVE SUMMARY

- 1.1 *An application has been received by the County Council to divert a section of public footpath no 507010 at Moss House in the parish of Burton in Kendal. The application is made by the landowner's son.*
- 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 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 507010 in the parish of Burton in Kendal shown A-B to a new route C-D-B as shown on the plan at Appendix A and if no objections are received, the order be confirmed. In the event objections are received and not withdrawn, the matter be referred to the Secretary of State for consideration.***

4.0 BACKGROUND

- 4.1 The current recorded route of the footpath passes through the centre of the busy dairy farm and agricultural contractors at Moss House. The recorded route is presently obstructed by barns and silage clamps which were constructed some time ago.
- 4.2 In 2006 Capita Symonds initiated an attempt to divert the footpath, but for reasons unknown this was never followed through.
- 4.3 The proposed diversion will take the definitive path out of the confines of a working farm onto a safer, cleaner, more accessible route around the edge of the farmyard following a newly constructed track.
- 4.4 The works, installation of a field gate to British Standard 5709:2018 at Point D, will be carried out by the Applicant.

Consultation

- 4.5 The statutory undertakers have been consulted and none are affected.

- 4.6 A consultation has been carried out with

South Lakeland District Council – no response received

Ramblers – No response received

Cumbria and Lakes Joint Local Access Forum (**CALJLAF**) – In a formal letter of response dated 3 June 2022 stated

“The diversion appears to meet the legal tests.

- The new path will be more convenient for the public to walk on. It will be drier and more direct
- The diversion will be more enjoyable, allowing extensive views and avoiding the farmyard
- The existing right of way is blocked by farm buildings. The diversion avoids

the busy farmyard, cattle sheds and silage pits.

- The new path will be at the edge of the farm track with a new hard surface
- The new path links to the public road at C and to the continuing footpath at B.

The diversion is strongly supported.

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

Burton in Kendal Parish Council – no response received

- 4.7 The local member for Lower Kentdale, Roger Bingham has been consulted and no formal response received.
- 4.8 The landowner (the applicant's father) has submitted his agreement to the diversion in writing.

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 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 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 interested party will have an opportunity before the order is confirmed to submit an objection. If an objection is made and not withdrawn, the matter will then be referred to the Secretary of State for a decision as to whether or not the order should be confirmed.

7.0 ASSESSMENT AND CONCLUSION

7.1 No objections have been received as a result of the consultations.

7.2 The present public footpath passes through the centre of a busy working farm between buildings and silage clamps.

7.3 The proposed diversion would relocate the footpath to a safer, cleaner and more accessible alignment and follow a more direct and open route along the edge of the steading on a newly constructed well-surfaced track. In doing so it would be more convenient and logical to follow whilst terminating at the roadside only a short distance away from the present footpath.

7.4 In considering whether the order should be made under Section 119(1) of the Act, I have also had regard to Section 119(6) as it must be noted the criteria for making and confirming an order are not identical (see paragraphs 5.1 and 5.3 above). I consider the criteria for making the order and confirming the order are made out in that the path will not be substantially less convenient to the public in consequence of the diversion and that is considered it would be 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 public right of way, and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

7.5 If Members approve the recommendation in this report, the order will be made both in the interests of the landowner and the public. If no objections are received to the order, it is recommended that the order be confirmed.

Angela Jones

Executive Director – Economy and Infrastructure

June 2022

APPENDICES

A *Plan showing proposed diversion*

B *Location plan*

IMPLICATIONS

Staffing: Nil
Financial: Nil
Electoral Division: Lower Kentdale – Roger Bingham

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS

[Including Local Committees]

No relevant decisions

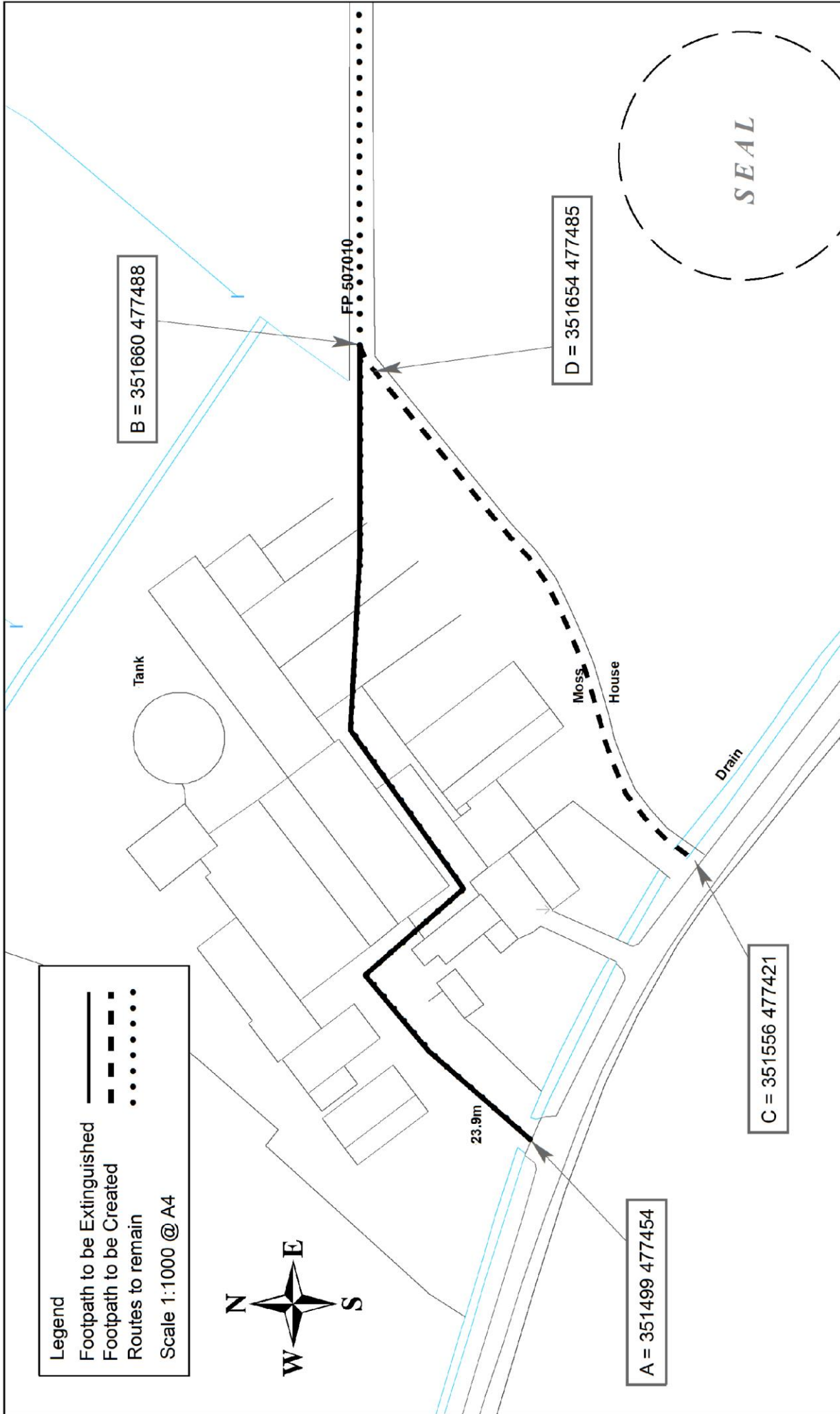
CONSIDERATION BY OVERVIEW AND SCRUTINY

Not considered by Overview and Scrutiny

BACKGROUND PAPERS

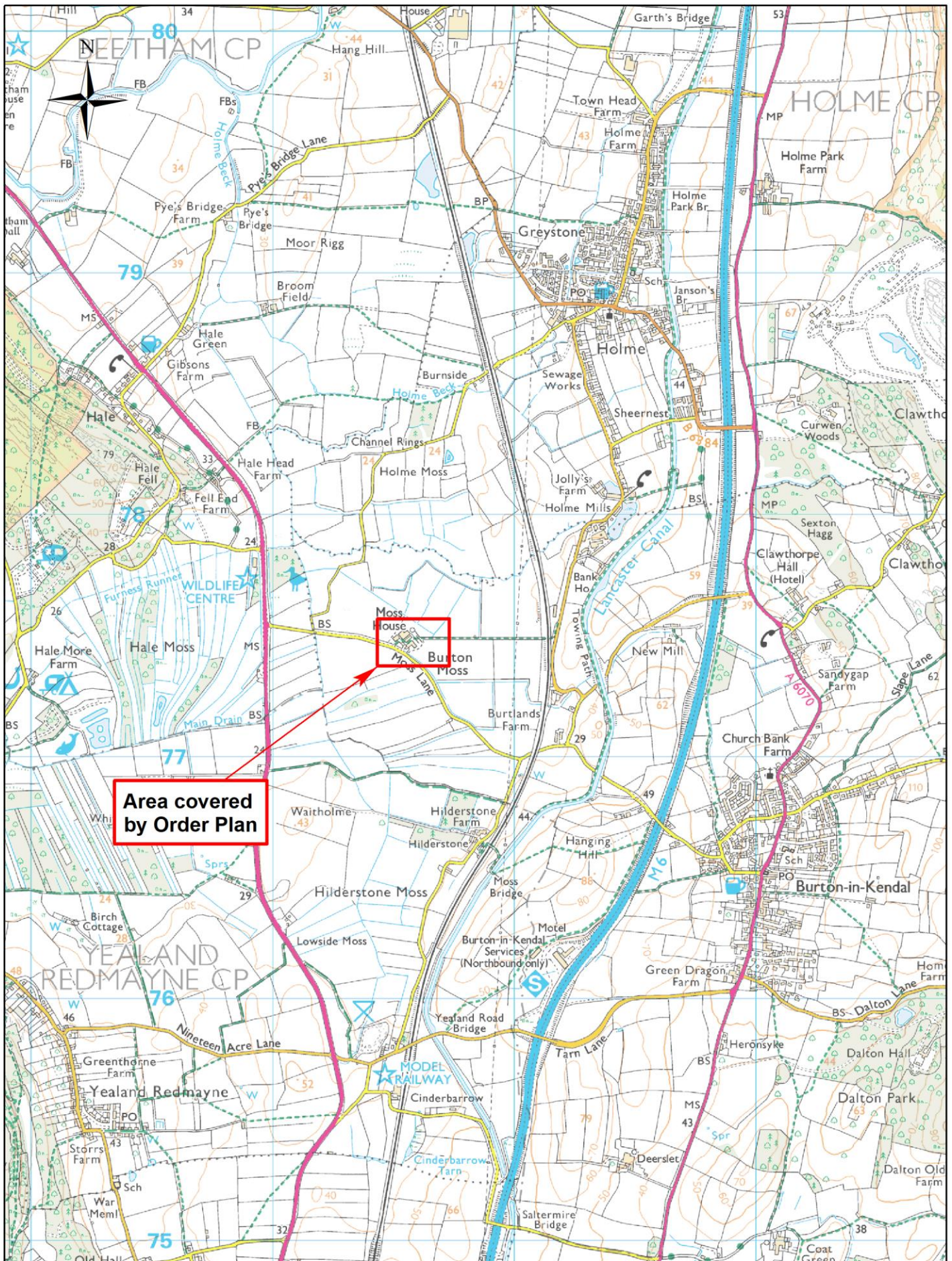
Cumbria Countryside Access Strategy.

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



Highways Act 1980 Section 119 and Wildlife and Countryside Act Section 53
 Public Footpath 507010 Diversion Order and Public Path Modification Order
 Moss Farm, Burton in Kendal





**Location Plan for Moss House Farm
Burton in Kendal**

Scale 1:20,000 @ A4

