

**South Lakeland District Council  
Cabinet**

**Monday, 4 July 2022**

**Cycling provision on Gooseholme and New Road**

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**Portfolio:** Economy, Culture and Leisure Portfolio Holder  
**Report from:** Director of Customer and Commercial Services  
**Report Author:** Gareth Candlin – Operational Lead - Place and Environment  
**Wards:** Kendal Town;  
**Forward Plan:** Not applicable

**Links to Council Plan Priorities:**

Working across boundaries – N/A

Delivering a balanced community – N/A

A fairer South Lakeland – N/A

Addressing the climate emergency – This proposal helps South Lakeland meet its Council plan objectives under addressing climate emergency by:

Developing town centres which are attractive and accessible for living, working and leisure.

Working with Cumbria County Council and other partners to promote and encourage the provision of and access to sustainable public transport across the district

Promoting active transport including cycling and walking

Supporting preparation and implementation of Kendal cycling and walking strategy

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**1.0 Expected Outcome and Measures of Success**

- 1.1 If this proposal is adopted it will safeguard £250,000 of Sustrans investment in the Gooseholme Bridge project.
- 1.2 Additionally it will help realise some of the Council's ambitions to increase cycling provision and access into the town centre as set out in the Local Cycling and Walking infrastructure Plan which is specifically supported in the Council Plan.
- 1.3 There will be a wider positive benefit for cyclists in Kendal and an increase in the options for sustainable travel within the town.

**2.0 Recommendation**

**2.1 It is recommended that Cabinet**

- (1) **Agrees as the landowner of Gooseholme and New Road Common to permit Cumbria County Council to facilitate the conversion of the current footpaths as marked in appendix three to bridleways therefore legally permitting the cycling on those pathways; and**

- (2) **Delegate to the Director of Customer and Commercial Services in consultation with the Lead Specialist – Legal, Governance and Democracy the authority to agree and enter into the required legal agreements to facilitate point 2.1(1) above.**

### **3.0 Background and Proposals**

- 3.1 As part of the package of funding secured by Cumbria County Council (CCC) to repair Gooseholme bridge a grant of £250,000 was secured from Sustrans on the basis that the new bridge would be able to accommodate both walking and cycling and would align with Sustrans objectives of improving sustainable travel methods.
- 3.2 In order to meet the conditions of the grant from Sustrans CCC must be able to demonstrate that it is possible to cycle both to and from the bridge and that a credible improvement has been made to the cycling network in Kendal.
- 3.3 In February 2021 Cabinet approved the following in a report which related to Flood Relief Management Scheme at New Road and Gooseholme the following:
- “(4) Approves that defined cycle routes across New Road and Gooseholme be deregistered for cycling – connecting to the new bridge”*
- 3.4 Unfortunately due to delays with the delivery of the Environment Agencies Flood Defence Scheme it has not yet been practical to move forward with deregistration as set out in the February 2021 Cabinet report.
- 3.5 Separately to this the County Council has been developing a Local Cycling and Walking Infrastructure Plan (LCWIP) for Kendal which identifies connectivity for both pedestrians and cyclists across Gooseholme and New Road Common as important to establish and deliver a comprehensive network of cycling and walking routes into the town centre. SLDC has in its Council Plan a commitment to “Supporting preparation and implementation of Kendal cycling and walking strategy”
- 3.6 To ensure that the ambitions within the LCWIP are realised in a timely manner and to ensure that the Sustrans grant is protected for Gooseholme Bridge this report proposes an alternative method to allow cycling on the paths located on Gooseholme and New Road Common.
- 3.7 The alternative approach is for SLDC to agree as the landowner that CCC in its role as the Highway Authority can amend the designation of the current paths on Gooseholme and New Road Common to be bridleways therefore allowing cyclists to lawfully use those pathways.
- 3.8 This approach would be undertaken by CCC as Highway Authority through the use of a ‘Creation Agreement’. This is usually a straightforward legal agreement signed by the two parties (Landowner and Highway Authority), and the right to cycle comes into existence on the date given in the agreement. Notice of a creation agreement must be published by the Highway Authority in at least one local paper.
- 3.9 This designation would apply to the pathways on Gooseholme and New Road Common only as identified on the plan to appendix three and would not create wider legal rights across the adjoining common area. There would be no physical

change to the paths and this would only be a change in the legal designation of the path.

- 3.10 The designation of a bridleway provides additional rights of way for users of the pathways as identified on the plan to appendix three, to cycle, ride on horseback (including leading a horse) and the movement of livestock. In the context of where this land is situated, in a busy town centre, the officer's view is that it is highly unlikely that these later rights (horse and livestock) would ever be exercised.

#### **4.0 Appendices Attached to this Report**

<b>Appendix No.</b>	<b>Name of Appendix</b>
1	Health and Sustainability Impact Assessment Map indicating proposed paths to be upgraded
2	Overview of consultation responses to LCWIP
3	Health and Sustainability Impact Assessment Map indicating proposed paths to be upgraded

#### **5.0 Consultation**

- 5.1 Extensive consultation was undertaken through the development of the LCWIP on the principal of facilitating cycling on Gooseholme and New Road Common. A summary of this consultation can be found in Appendix two.
- 5.2 The Open Spaces Society and Friends of the Lake District have been informed of the Councils intentions.

#### **6.0 Alternative Options**

- 6.1 That the Council waits for the appropriate time within the context of the Environment Agencies flood scheme to formally deregister the paths and permit cycling on the deregistered land.
- 6.2 This would not be achievable in time to satisfy the Sustrans obligations and consequently that funding would be at significant risk.

#### **7.0 Implications**

##### **Financial, Resources and Procurement**

- 7.1 There are no financial, resource or procurement implications other than those related to the drafting resolution of the legal agreement between SLDC and CCC.

##### **Human Resources**

- 7.2 N/A

##### **Legal**

- 7.3 Under section 25 of the Highways Act 1980, dedication of a route as a bridleway can be dealt with by way of agreement with the local authority and the landowner/any person having the necessary power to dedicate a bridleway over its land. If Cabinet

support the officer recommendation to dedicate the footpaths as a bridleways, CCC will provide SLDC with a written agreement to dedicate the footpaths as bridleways for sealing. CCC have advised that there are no formal consultations required.

As Members will be aware, cycling over Common Land is restricted by:-

a) section 34 of the Road Traffic Act 1988 which prevents a mechanically propelled vehicle being driven on any common land without lawful authority; and

b) section 193 of the Law of Property Act 1925 which makes it an offence for a person to drive any carriage, cart, caravan truck or other vehicle on common land without lawful authority; and

c) the Countryside Rights of Way Act 2000- Para.1(a) of Sch.2 states that the right does not entitle a person to be on land if that person, 'drives or rides any vehicle other than an invalid carriage'

These are the reasons why it is preferable for the land to be de-registered from the Common and the reason for the previous recommendation to Cabinet.

- 7.3.1 By assisting the County Council in their preferred way of dealing with this matter, by the creation of a bridleway, this will provide 'lawful authority' to permit users of the footways identified at appendix three to ride horses in addition to cycling. Section 30(1) of the Countryside Act 1968 gives the public the right to ride a bicycle on any bridleway but, in exercising that right, cyclists must give way to pedestrians and persons on horseback.

Permitting horse riding along the common footpaths is not a current aim of the Council.

- 7.3.2 A bridleway is a public right of way and as such is maintainable by the Highways Authority under section 41 Highways Act 1980. This duty to maintain means that the highway agent must keep the road in such good repair, that it is reasonably passable for the ordinary traffic of the area. In addition a Council can assume responsibility for maintenance under section 42 of the Highways Act 1980 and under section 101 of the Local Government Act 1972. Legal have been advised that the Highways Authority maintains the footpaths at Gooseholme Common. The position regarding New Road pedestrian paths is not known, but the designation of the paths as bridleways will mean that the extent of the bridleway is to be maintained by the Highways Authority.
- 7.3.3 Notwithstanding the above, the council as landowner will have certain responsibilities to maintain any structures on the bridleway such as barriers, gates etc. A proportion of these reasonable costs for maintenance can be claimed from the Highways Authority and under section 146 of the Highways Act 1980 no less than a quarter of such expenditure can be recovered.
- 7.3.4 The Council must ensure that vegetation does not obstruct the route of a bridleway from the side or from above. Consideration of how much clearance is needed depends on the type of route and who uses it. For example, a bridleway will require more clearance than a footpath due to the practicalities of a horse being ridden along the path. Legal services recommend Officers make enquiries with Cumbria County Council to ensure the footbridge can accommodate horse riders.
- 7.3.5 Minimum and maximum widths of bridleways, for the purposes of restoration and the prevention of encroachment are set out in Schedule 12A to the Highways Act 1980. It is not known whether checks have been made in this regard by Cumbria County Council or the Council, but if not Legal services recommend that checks are made in this regard.

7.3.6 Finally given that the request is from County Council, we recommend that any associated costs payable to County Council regarding an application to designate the footpaths as bridleways are waived.

### Health and Sustainability Impact Assessment

7.4 Have you completed a Health and Sustainability Impact Assessment? Yes (attached at Appendix 1) Yes

7.5 If you have not completed an Impact Assessment, please explain your reasons: N/A

7.6 Summary of Health and Sustainability Impacts

		Positive	Neutral	Negative	Unknown
<b>Environment and Health</b>	Greenhouse gases emissions	X			
	Air Quality	X			
	Biodiversity		X		
	Impacts of Climate Change	X			
	Reduced or zero requirement for energy, building space, materials or travel	X			
	Active Travel	X			
<b>Economy and Culture</b>	Inclusive and sustainable development		X		
	Jobs and levels of pay		X		
	Healthier high streets	X			
	Culture, creativity and heritage		X		
<b>Housing and Communities</b>	Standard of housing		X		
	Access to housing		X		
	Crime		X		
	Social connectedness		X		

### Equality and Diversity

7.7 Have you completed an Equality Impact Analysis? No

7.8 If you have not completed an Impact Analysis, please explain your reasons: N/A

7.9 Summary of Equality and Diversity impacts

Please indicate: P = Positive impact; 0 = Neutral; N = Negative; Enter "X"					
<b>Age</b>	P		0	x	N
<b>Disability</b>	P		0	x	N
<b>Gender reassignment (transgender)</b>	P		0	x	N
<b>Marriage &amp; civil partnership</b>	P		0	x	N

<b>Pregnancy &amp; maternity</b>	<b>P</b>		<b>0</b>	<b>x</b>	<b>N</b>	
<b>Race/ethnicity</b>	<b>P</b>		<b>0</b>	<b>x</b>	<b>N</b>	
<b>Religion or belief</b>	<b>P</b>		<b>0</b>	<b>x</b>	<b>N</b>	
<b>Sex/gender</b>	<b>P</b>		<b>0</b>	<b>x</b>	<b>N</b>	
<b>Sexual orientation</b>	<b>P</b>		<b>0</b>	<b>x</b>	<b>N</b>	
<b>Armed forces families</b>	<b>P</b>		<b>0</b>	<b>x</b>	<b>N</b>	
<b>Rurality</b>	<b>P</b>		<b>0</b>	<b>X</b>	<b>N</b>	
<b>Socio-economic disadvantage</b>	<b>P</b>		<b>0</b>	<b>X</b>	<b>N</b>	

<b>Risk Management</b>	<b>Consequence</b>	<b>Controls required</b>
The allocation of bridleways on Gooseholme and New Road will technically allow to the riding of horses and driving of livestock.	Potential nuisance to other users and surrounding area	This risk is viewed as very low and the location of the common land would make these activities highly unlikely

### Contact Officers

Gareth Candlin; Operational Lead – Place and Environment, 01539 793382, [gareth.candlin@southlakeland.gov.uk](mailto:gareth.candlin@southlakeland.gov.uk)

### Background Documents Available

<b>Name of Background document</b>	<b>Where it is available</b>
Cabinet minute CEX/132 (Feb 21)	<a href="#">Agenda for Cabinet on Wednesday, 3 February 2021, 10.00 a.m. (southlakeland.gov.uk)</a>

### Tracking Information

<b>Signed off by</b>	<b>Date sent</b>	<b>Date Signed off</b>
Section 151 Officer	01/06/2022	17/06/2022
Monitoring Officer	01/06/2022	13/06/2022
CMT		16/06/2022

<b>Circulated to</b>	<b>Date sent</b>
Lead Specialist	NA
Human Resources Lead Specialist	N/A
Communications Team	N/A
Leader	N/A
Committee Chairman	N/A
Portfolio Holder	N/A
Ward Councillor(s)	N/A
Committee	N/A
Executive (Cabinet)	16/06/2022
Council	N/A