

**CALDBECK PARISH COUNCIL**

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**10 December 2017**

Dear Ms Fairclough

I am writing to you to ask if you will intervene in Caldbeck Parish Council's request for County Council support for establishing a footpath between Caldbeck and Hesket Newmarket. The request follows Allerdale Local Committee's meeting where Caldbeck Parish Council asked a question under the County Council's public participation scheme. The prepared reply stated that you or a Corporate Director would review the officer decision not to provide the support that Caldbeck Parish Council has sought.

In brief, a footpath directly linking the villages, easy to walk and cycle, mobility friendly, and safe, is the key objective in Caldbeck's Parish Plan, attracting strong support from across the community. The construction of the footpath is to be funded by a gift from one of Caldbeck's residents and there is a unique opportunity to provide a lasting community asset for generations to come. Initially all 10 landowners were supportive but two have given back word and an Order is required for the project to progress. Whilst both the County Council and the Lake District National Park have powers to pursue an Order, the National Park has made clear that it requires the County Council as Highways Authority to confirm in writing its support for an Order. The National Park would provide the staff resources but in the event of an Inquiry, the County Council would need to fund legal costs up to £10,000 to defend the Order and up to £30,000 if an Order were not confirmed.

Whilst sympathetic to the merits of the footpath, County Council officers have said 'no': they argue they have a power but not a duty to pursue an Order, they have other high priority work, including all the post Desmond storm damage reconstruction, and they are concerned that an Order might be challenged. They would prefer all landowners to be in agreement but if there were such agreement then there would be no need for an Order. The Parish Council has sought agreement at all points but without success. An Order is now required if the project is to proceed.

The Order in itself would strengthen the Parish Council's position and give a further opportunity for the Parish Council to approach the landowners and see if agreement could be reached and hence avoid the risks of an Inquiry. If agreement could be reached and potential legal costs avoided, it may be possible to offer a slightly higher rate of compensation to all landowners.

But there is no guarantee of such an outcome and the Parish Council fully accepts that if an Order were created, there would need to be a commitment to defend the position in any Inquiry, with associated costs and staff resources.

Caldbeck Parish Council considers that it has not received a fair hearing. Officers have visited Caldbeck and discussed the proposals. But the Parish Council's sense is that officers have been negative from the outset and have not wished to look at what positive contribution the County Council could make, working in partnership with the Lake District National Park and ourselves.

This negativity is reflected in the official response given at Allerdale Local Committee. The response stated that the County Council has a power but no duty to create an Order and highlighted the resource constraints it faces. Further the County Council would not help unless all the landowners agreed: but this completely misses the point that the Parish Council would not be asking for the Order if agreement were forthcoming. Whilst the response stated that the Lake District National Park could make an Order, the National Park has been explicit: it would be willing to provide staff resources but it would need written confirmation that the County Council supports an Order. As the County Council is the Highways Authority and ultimately responsible for looking after footpaths, without its confirmed support an Inquiry would quickly side with those contesting the Order.

The Parish Council is committed to pursuing the project and is using all avenues available to it. In taking a question to Allerdale Local Committee, the Parish Council wrote to Trudy Harrison, Sue Hayman, and Rory Stewart, the three Allerdale MPs. All have provided firm support and I believe you have received representations from them. The Parish Council is now canvassing wider support from others with local connections and influence.

We were disappointed that the format of the public participation scheme prevents any debate and Councillors are not given an opportunity to express their views. Indeed we were alarmed to learn that Cabinet Members were advised by Legal Services not to talk to us at all about the footpath. However, the Parish Council recognises that simply asking a question brings an issue to attention. We would therefore like to ask the following question under the public participation scheme at County Council on 11 January 2018:

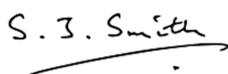
*Will Councillors support Caldbeck Parish Council in requesting the County Council to use its authority to help establish a footpath alongside the road between Hesket Newmarket and Caldbeck, the construction of which is being funded by a gift?*

There is a real opportunity for the County Council, Lake District National Park and Parish Council to work collaboratively to create such a worthwhile asset, at minimal cost to the public sector given the generous gift to fund the footpath's construction. The National Park is happy to provide staff resources. But the County Council needs to be firmly on board, fully supportive and prepared to fund legal costs in the event of an Inquiry. Such collaborative working fits absolutely with the County Council's Plan, including working in partnership and for communities. The County Council makes much of its leadership role for local government in Cumbria: making that happen in this case would be welcomed.

In light of our concerns regarding the handling of the request for support, the Parish Council would be delighted to meet to discuss the project and how it might be taken forward positively. Our understanding is that Angela Jones consulted Dominic Donnini about the footpath and he supported her decision. Hence we would ask that you, or a Director not familiar with the case, considers our request for support. We stand ready to meet and I would be grateful if you would offer some possible dates which I can put to the Chairman and other members of the footpath working group. Meantime to explain the matter in more detail I attach the story to date.

I look forward to hearing from you.

Yours sincerely



**Simon Smith**

## **Appendix 1: Brief History of the Caldbeck Hesket Newmarket Footpath Project**

An off road footpath and cycleway along the 1 mile road between Caldbeck and Hesket Newmarket was the main request arising out of a parishioner referendum which resulted in the Caldbeck Parish Plan 2005 - 2015.

The relevant paragraph of the Parish Plan published after replies to the questionnaire were received reads:

*“Q9 Would you like to see safe footways alongside some roads in the Parish, and if yes, where would you like to see them?”*

*Pedestrians in rural areas generally accept as a fact of life that they share the roads with vehicles. However, no less than 65% of respondents highlighted a demand for a safe footway in the Parish. This clearly indicates a strongly-felt need, which is confirmed by the response to the second part of the question. Of 200 suggestions a massive 173 were for a safe footway along Hesket Lonning between Caldbeck and Hesket Newmarket. This winding road, barely wide enough for two cars to pass, and with a complete absence of verges along most stretches, is notoriously tricky both for pedestrians and cyclists. There are many reports of near misses, and the low numbers of accidents can be attributed to a general reluctance to make the journey on foot. In this sense it can be regarded not so much as a road connecting the two parts of the Parish, as a road separating them.”*

In 2005 the Parish Council obtained the oral agreement of all landowners to a route on the north side of the road. During detailed planning, objections were raised about the north side and a route was prepared on the south side.

A resident of the Parish offered her £100,000 donation to fund the compensation to the landowners, the new fencing and Works, and the construction of a wheel chair friendly footpath.

Surveyors were instructed to draw detailed plans and agree Works with each landowner.

One landowner then gave back word and the scheme was dropped. *At the time* the donor's preference was to proceed only if there were agreement with all parties.

Then in 2013 the landowner told a Parish Councillor that he would allow the footpath on the north side. The scheme was resurrected, and after talking to all the other landowners, and also Cumbria County Council Highways and the Lake District National Park Authority, a route was worked out which had everyone's consent. The oral agreement was backed up with letters to all landowners. Subsequent letters were sent at various intervals confirming progress made.

Applications were sent in on 30.3.2015 to remove the common rights attaching from the proposed footpath land under section 11 of the Commons Act 2006, by agreement with each of the landowners whose land had rights attached. Detailed plans were drawn and the Works agreed with the landowners.

Call Options (initially to 31.12.17 but where the Parish Council is seeking extensions) for either dedication or sale of the land concerned were then drawn. Those Call options to enable the Parish Council to buy the land required have now been signed and completed by 8 of the 10 landowners.

A second landowner (fields 12 and 13 on the plan attached) gave backward in 2016. But after consulting Cumbria County Council Highways, it was agreed we could proceed as the footpath could, if needs must, go onto the road across the frontage. At that point on Heskett Lonning, there is sufficient space to accommodate the footpath, although it would be better if sited the other side of the hedge as planned.

Then in late 2016 the first landowner (fields 11 and 14) gave backward again resulting in the current impasse. In this case there is no room to accommodate a footpath on the highway across the frontages of the fields.

Alternative routes making use of the net work of local footpaths are not suitable: the intention, supported overwhelmingly by residents, has always been to provide a direct, easy to walk or cycle, safe, wheelchair accessible path. Hence there is a need for the footpath to be sited on land where two landowners have now withdrawn their support and where eight landowners are content and have signed options.

£6,000 or so has been spent on fees, mainly the landowners' solicitors costs and the mapping costs.

The only way forward is to make a Footpath Creation Order under section 26 of the Highways Act 1980. This time the donor is willing for the Parish Council to try and progress such but she does not wish her donation to be used to pay the costs involved. The Parish Council was unanimous in its vote to progress the making of a footpath creation order.

Under section 26 only the County Council or a District Council can make an order. The proposed footpath is in the Lake District National Park and the LDNPA act as agents for the County Council for footpath matters. The District Council is not involved in footpath creation: it may take action to deal with obstructions on existing footpaths only.

The LDNPA has authority to make a Creation Order under section 26 (by virtue of the Environment Act 1995) but has made clear that it requires written confirmation that the County Council, as Highways Authority and ultimately responsible for footpaths, fully supports the action. Further it requires an indemnity for potential legal costs of up to £30,000 which the Parish Council cannot give.

The Parish Council asked the County Council for help in December 2016. We eventually obtained a meeting with two officers at the end of March 2017: it was clear they were reluctant to help, citing high priority flood restoration work and other pressures. It was agreed that following the meeting they would talk to the LDNPA and see if the Creation Order could be progressed by a partnership arrangement with the LDNPA. We were to be informed by the end of April. We were then deferred for County Council elections in May where there was no clear result for any grouping of parties and the time taken for the County Council to agree on a new administration.

We have since asked the Leader of the County Council, his Deputy and the Cabinet Member now responsible for footpaths to come and see the problem and talk to us. They have not accepted our invitation and, despite further promptings, we have not had any response.

On 14th August we were then told that officers had recommended that the County Council should not proceed with a Creation Order. We were surprised that a recommendation/

decision was being made when we had asked to meet Cabinet Members. We asked for the County Council's briefing paper sent to Cabinet Members. This had been refused earlier but the County Council did send us a copy. We were disappointed to see so many errors in the document and its overall tone and have provided the County Council with a detailed commentary on the paper.

We have since had a second meeting with senior officers on 7th September. They walked the part of the footpath for which we require the Creation Order. They accepted the criticisms we made of their briefing paper. They see obvious merit in the footpath and recognise a great deal of work has been completed. The officers explained again that the County Council lacked money and resources and it was embroiled in High Court litigation on another footpath application to register 44 footpaths in another parish. So while the County Council would like to help as it recognises the merits and public benefit, its bottom line is that as it does not have a statutory duty to pursue an Order it will not. We contend that our project bears no resemblance to the County Council's current predicament. The officers did agree to look again at the detailed response we made to their paper and if there may be some way of providing support. But the message they left us was the same as in March and the officers have decided against supporting the project.

We have argued that:

The potential costs for the Creation Order are very small in the County Council scheme of things, and its contribution of time and money should bring about a great community asset of lasting value in this Parish which is funded by a generous gift. The County Council's refusal to help will mean we have to abandon the project and return the donor's money.

We have asked the County Council to consider also the risks of not going ahead with the project: the continuing risks of accidents on Hesket Lonning and any fall out from the cancellation of the project.

We asked the officers to talk to the LDNPA as we had no report as promised in March. We understood the LDNPA would be willing to provide the officer time to make the Creation Order and manage the public inquiry or appeal by representations which might follow. We have therefore asked the County Council if it would reconsider a partnership approach with the County Council either leading the Creation Order but using the LDNPA as its agent or giving the explicit support the LDNPA requires if it were to use its powers under the 1995 Environment Act. Whichever route is followed for a Footpath Creation Order, the County Council would need to be prepared to contribute to the costs estimated at up to £30,000.

The help requested would seem to sit happily with the County Council's stated objectives in its Council Plan 2016 – 2019, extracts from which are in Appendix 2 below.

The officers have discussed their recommendation with relevant Cabinet Members but at this point the County Council is unwilling to help. We have again repeated our invitation to meet the Leader, Deputy Leader and relevant Cabinet Member.

## **Appendix 2: Cumbria County Council Plan 2016 -19 updated 3 June 2017: Extracts.**

**The council of the future will be an organisation that:**

### **Encourages independence:**

assisting and empowering people to live healthy, independent lives - drawing on the support already available in their local communities and making sure people are able to access support easily from the council if they need it.

### **Listens to communities and involves people in the decisions that affect their lives:**

focusing on working within the communities where people live and work; making sure they can have their say about decisions that affect them - as well as them helping shape the services in their local area and supporting them to grow their resilience.

### **Works in partnership:**

with whoever is best placed to do the job, particularly across the public and third sector - making sure we are not working in isolation and maximise the opportunities there are to work together to tackle issues and cut costs.

### **Doesn't comprise on the public's safety:**

meeting our responsibilities through the delivery of regulatory services, as lead Flood Authority, and as the Fire Authority.

### **Communities**

Work with communities and the third sector to enable them to shape, own, or run local services to meet their local needs and provide healthy communities.

Meet our statutory responsibilities for environment and regulatory services by focusing our work where the risks are greatest.

### **Rural proofing**

The council doesn't have the resources to provide all services in the same way in every community in the county, and how services are provided in urban areas often won't work in sparsely populated areas. Within such a diverse county, different communities will have different service needs, strengths and facilities, and therefore solutions and how people access services will be different in different places. The council has a commitment to working with communities and the third sector to take forward this work.