

## **Press Notice - Caldbeck to Hesket Newmarket footpath Cumbria County Council buries report and refuses Caldbeck Parish Council's question**

### **Summary**

For years Caldbeck Parish has been wanting a footpath alongside the lane linking Caldbeck and Hesket Newmarket. It is a busy lane and dangerous to walk and cycle along, narrow in places with blind bends. Thanks to a generous donation, the Parish Council has the resources to construct the footpath and pay compensation to landowners. All 10 landowners originally agreed to the footpath but two gave back word. The Parish Council has been seeking support from the County Council which has the power to issue a Footpath Creation Order but with no success. The Parish Council therefore requested an independent review of the officer decision not to support the footpath. Because of the intervention of the Information Commissioner, it is now clear that the independent reviewer in his original report found in favour of the Parish Council but the County Council attempted to bury that report and produced a second report which only looked at the processes followed, not the merits of the decision not to support the footpath. Mediation has not proved possible with the two landowners not wishing to participate so the Parish Council decided to ask full County Council to help implement the recommendations of the independent reviewer's original report. The County Council has refused to allow the question, claiming there has already been an investigation which has run its course and that the Parish Council is being vexatious in suggesting the County Council could overturn the decision. The Parish Council profoundly disagrees with the County Council and believes local democracy is being denied. It has therefore decided to issue this press notice which goes to all County Councillors, Cumbrian Members of Parliament, other stakeholders, and the press and media. It urges County Councillors to support the footpath, including approving a motion if necessary at a future County Council.

### **Commentary**

Caldbeck Parish has been wanting to establish a footpath directly linking Caldbeck and Hesket Newmarket villages for many years. Walking along the lane is dangerous and there is a pressing need for a direct, easy to walk and cycle, mobility friendly, safe path. A route alongside the road bordered by the existing hedges and a new fence has been identified. Originally all 10 landowners were supportive but two have changed their minds. Thanks to a £100,000 donation by a parishioner, the Parish Council has the funds to construct the footpath, put in fences and gates, and pay compensation to landowners. The donation will be returned if the footpath is not built.

For three years the Parish Council has been asking the County Council for support. The County Council has the power to issue a Footpath Creation Order but is not prepared to do so. It recognises the merits of the footpath and how a direct footpath would benefit the community. But it has not been willing to use its powers because of potential legal costs. If the Order were opposed and taken to an Inquiry, legal costs would mount up and if the Inquiry ruled against the Order, landowners' costs would also be awarded. In these circumstances worst case legal costs are estimated at £30,000. The Parish Council accepts that if legal risks were independently assessed as being too high, then any Order should be withdrawn but no such assessment has been made.

In recent months the Parish Council has considered whether it could raise contributions for legal costs. But in September 2019 the County Council stated that it would only issue an order if all landowners were in agreement to the footpath. However, if all landowners were in agreement, there would be no need for a Footpath Creation Order nor any involvement of the County Council in the footpath's legal establishment. In a similar case, it is worth noting that Carlisle City Council is willing to make such an Order and fund legal costs (Waverley Viaduct).

The County Council suggested that either the Lake District National Park (the National Park) or Allerdale Borough Council (Allerdale) could issue a Footpath Creation Order. The National Park is happy to provide staff resources and is the County Council's agent for all footpath work in the National Park. But it requires the County Council as Highways Authority to instruct it and for external legal costs to be covered. Allerdale has no involvement in footpath creation in the National Park but has offered a small grant to support legal costs. Hence the County Council is the only authority that can issue a Footpath Creation Order for the Parish Council's proposed footpath.

In December 2017 the Parish Council asked Allerdale Local Committee for its support. Allerdale Local Committee advised the Parish Council to write to the Chief Executive, Katherine Fairclough, requesting a review of the merits of the officer decision not to issue a Footpath Creation Order. The Parish Council duly wrote to the Chief Executive on 10 December 2017 who tasked Dan Barton, Assistant Director Education and Skills, to undertake an independent review. He prepared a report on 21 February 2018 (the original report). The County Council sent a report from Dan Barton dated 26 April 2018 (the second report) to the Parish Council on 14 May 2018, more than 3 months after the County Council's timetable for concluding its review and only after the Parish Council had pressed repeatedly for its response. That second report confined itself to looking at the processes followed, not the merits of the decision not to support the footpath which was the Parish Council's overriding concern. The County Council sought to bury the original report but the Parish Council eventually secured its release after referring the matter to the Information Commissioner (21 August 2018) who ordered the County Council to provide the original report (15 March 2019). The County Council did so (26 April 2019), 5 days after the deadline.

The original report showed that the independent reviewer had concluded that the County Council should support the footpath, including issuing a Footpath Creation Order. It is deeply concerning that the County Council rewrote the original report and then sought to cover up that fact. Without the intervention of the Information Commissioner, no one would have known what had taken place. An independent review should be exactly that and independent reviewers should have the courage to stand by their conclusions, a point highlighted by the Information Commissioner. In releasing the original report the County Council sought to dismiss it, arguing that the independent reviewer had misunderstood the brief but the County Council had no record of the brief nor any terms of reference for the review. It would be for the County Council's Audit Committee to consider whether this case raises general questions about the status and robustness of independent reviews. Following receipt of the independent reviewer's original report, the Parish Council has discussed possible next steps with the County Council. The Parish Council was keen to see if mediation might lead to resolution but the County Council's offer of mediation by the Assistant Director responsible was rejected by the landowners. Mike Johnson, County Councillor for Thursby division (including Caldbeck) since May 2019, also offered to mediate but the landowners again said 'No'.

The Parish Council has discussed whether there are alternatives to the proposed footpath with the County Council and National Park. The network of existing footpaths could potentially be improved and upgrading may well be of merit. But any upgrading would not provide the direct, easy to use, safe route which is what the community wants. County Council and National Park officers agree that a route alongside the lane is the sensible solution.

The Parish Council has considered whether it would be helpful to put in the footpath where there is agreement. That would mean the footpath would emerge on the lane where it is particularly narrow and with blind bends. The County Council as Highways Authority would need to put up warning signs and some infrastructure such as painted road surface and paring back verges where possible to provide a safer walkway. But there would remain a serious risk from the traffic and there would be an expectation of greater use by pedestrians given the establishment of a part footpath and its signposting, which would encourage its use.

In December 2019 the Parish Council consulted parishioners about budget proposals and took the opportunity to ask for views about the long proposed footpath. 235 responses were received in total, which represents 40% of parishioners and covers some 50% of households. 70% of respondents were in favour of the footpath and the Parish Council continuing to press for its establishment. Whilst 30% of respondents currently walk along the lane, 70% said they would use the new footpath. Those currently using the lane would use the footpath more frequently than they use the lane. There were some 100 comments about the danger posed by the road from traffic. These sentiments were shared in an online petition in December 2017 which attracted more than 1,600 signatures expressing support for a direct footpath.

There was a 52:48 majority in support of the Parish Council lobbying the County Council to take action. The Parish Council recognises the caution expressed by some respondents and would much prefer consensus and agreement. But the Parish Council also has to weigh the risks posed to pedestrians and cyclists by traffic along the lane. Some parishioners have shown a willingness

to contribute to legal costs. More than £6,000 has been indicated with numerous people not wishing to suggest a figure at this stage.

The Parish Council believes the County Council should now implement the recommendations of its independent reviewer. The County Council should work with the National Park and the Parish to establish the footpath, and be prepared to issue a Footpath Creation Order. It is deeply frustrating that the entire project, which should have been a model of collaborative working that fits so well with the County Council's professed leadership role for Local Government in Cumbria, has made such little progress. But at no stage has the County Council been willing to sit down with the National Park and the Parish Council at Cabinet or senior level to see how best all parties could work to establish a footpath of lasting benefit to the community, largely funded by a donation.

### **Question for County Council**

The Parish Council therefore wished to ask the following question at County Council on 9 January 2020 as a means of highlighting its concerns and pressing for County Council action:

**In light of the independent reviewer's original report concluding that the County Council should support the establishment of a direct footpath between Caldbeck and Hesket Newmarket, the recent restatement of local support for the footpath, the dangers confronting those walking or cycling along the road, and the generous donation which would fund a public asset of lasting benefit to the community and which would have to be returned if the footpath is not established, will County Councillors require the County Council to use its powers to issue a Footpath Creation Order, if necessary by proposing such a motion at a future meeting of the County Council?**

The County Council has ruled that the question is not appropriate for a full Council meeting. It points out that questions can be excluded: where there is already an existing right of appeal or a separate complaints process; or anything it considers to be vexatious, abusive or otherwise inappropriate.

As regards the Parish Council's concerns about the footpath, the County Council argues there has already been a separate complaints process on the footpath and putting full Council in the position of appeals forum would be wholly inappropriate. It states that the complaints process concluded that the decision not to support a footpath creation order had been taken correctly and by the authorised decision maker citing the independent reviewer's second report dated 26 April 2018.

Furthermore, a meeting of full Council is not the authorised decision maker in this matter which means it "*could not require the Council to use its powers to issue a footpath creation order*", whether by motion or otherwise. This, the County Council argues, means the question would also be excluded as it is inappropriate to ask full Council to do something it is not authorised to do.

The Parish Council takes issue with this ruling on a number of grounds.

The County Council has a scheme of delegation and officer decisions but its Constitution is explicit that those giving the delegation can choose to exercise the function: "*Where a power has been delegated to an officer the person or body that has delegated the function is not prevented from exercising the function.*" (Constitution Part 3 paragraph 2.4). That gives Councillors the final say should they so wish. Councillors are able to submit motions to County Council and ultimately, if Councillors feel strongly about an issue, they do have a mechanism for asserting their view.

As regards the footpath, the Parish Council requested an independent review of the decision not to support the footpath as suggested by Allerdale Local Committee in December 2017. The Parish Council did not raise a complaint; it was the County Council that chose to classify the Parish Council's request as a complaint. The independent reviewer assured the Parish Council that he would address the merits of the decision not to support the footpath. That is what he did in his original report and he concluded the County Council should support the footpath. The County Council then attempted to bury his report which the Information Commissioner ruled had to be released.

Far from being vexatious, the Parish Council is simply wanting to establish the footpath and believes that County Councillors should be able to express their views. A number of County Councillors are also Carlisle City Councillors and that local authority has taken a very different view to using its powers of issuing a Footpath Creation Order in the Waverley Viaduct case. The County Council says it will only issue a Footpath Creation Order where all landowners are in agreement but in these circumstances there is of course no need for a Footpath Creation Order. The County Council's position is absurd - it will only use its powers when they are not needed.

If the County Council had wished to look critically at its processes to learn lessons, it should have considered two critical points:

- Whilst claiming to be the lead authority for local government in Cumbria, the County Council has never sat down with the National Park (which has been willing to provide staff resources to process the Footpath Creation Order) and the Parish Council to see what could be done by working collaboratively. Had that been undertaken at the outset, the project might have provided a model for effective local government working that the County Council claims to facilitate. But despite the Parish Council's many requests, the County Council refused any joint meeting.
- Throughout the entire process, the County Council has failed to meet its many deadlines, months late for internal deadlines and weeks late for statutory deadlines.

### **Contacts**

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### **Caldbeck to Heskett Newmarket footpath - Chronology and Documents**

#### **Developments to December 2017**

**A full account of the background to the footpath and the chronology to December 2017 is set out in the Parish Council's letter to all County Councillors 23 December 2017 ([here](#)).**

In brief, the proposal for a direct footpath, linking Caldbeck and Heskett Newmarket villages, safe, easy to work and mobility friendly, came from a referendum of parishioners which resulted in the **Caldbeck Parish Plan 2005-15**. It was the main request from the consultation: 173 out of 200 suggestions were for the establishment of the footpath.

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

A resident of the Parish offered a £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 for several years.

**2013 to 2016** - the landowner told a Parish Councillor that he would allow the footpath on the north side. The scheme was resurrected, and after talking to the other landowners, and Cumbria County Council Highways and the Lake District National Park Authority, a route was worked out which had everyone's consent and which was confirmed in correspondence. Detailed plans were drawn and the Works agreed with the landowners. Call Options were drawn and completed by 8 of the 10 landowners but two landowners gave back word. £6,000 has been spent on fees, mainly the landowners' solicitors costs and the mapping costs.

The Parish Council considered that that the only way forward was to make a Footpath Creation Order under section 26 of the Highways Act 1980. Only the County Council or a District Council can make an order. The proposed footpath is in the Lake District National Park and the National Park acts as agents for the County Council for footpath matters. Allerdale Borough Council is not involved in footpath creation: it may take action to deal with obstructions on existing footpaths only.

**December 2016** - the Parish Council asked the County Council for help to establish the footpath through using its power to issue a Footpath Creation Order.

**March 2017** - the Parish Council met County Council officers but was concerned by the absence of any enthusiasm for supporting the footpath.

**August 2017** - the County Council informed the Parish Council that officers had recommended that the County Council should not proceed with a Footpath Creation Order.

**September 2017** - the Parish Council had a second meeting with senior officers. They walked the part of the footpath for which the Parish Council is asking the County Council to issue a Footpath Creation Order. They saw merit in the footpath but restated their view that as the County Council does not have a statutory duty to pursue an Order it will not given the costs and financial risks.

**December 2017** - The Parish Council decided to ask County Councillors for their support, making use of the County Council's public participation arrangements. The intention was to ask Allerdale Local Committee for its support as a prelude to raising the issue at Full County Council.

### **Chronology since December 2017**

**The majority of documents referred to up to 21 August 2018 are included in the supporting papers sent to the Information Commissioner and are published in full**

**5 December 2017** - Caldbeck Parish Council attends Cumbria County Council's Allerdale Local Committee and asks for support for the footpath.

**10 December 2017** - Caldbeck Parish Council writes to Katherine Fairclough, Chief Executive Cumbria County Council, asking for an independent review of the officer decision not to support the footpath ([here](#)).

**18 December 2017** - Caldbeck Parish Council launches on line petition asking for support for the footpath. It attracted more than 1,600 signatures.

**23 December 2017, 4 and 10 January 2018** - Caldbeck Parish Council writes to all Cumbria County Councillors (emails [here](#) and letter [here](#)).

**5 February 2018** - Dan Barton, Assistant Director Cumbria County Council, the independent reviewer, visits Caldbeck to meet the Parish Council and see the site of the proposed footpath.

**21 February 2018** - Dan Barton, Assistant Director Cumbria County Council, produces his original report ([here](#)).

**26 April 2018** - Dan Barton, Assistant Director Cumbria County Council, produces his second report ([here](#)).

**14 May 2018** - Cumbria County Council provides its outcome of the independent review, including a copy of Dan Barton's second report ([here](#)).

**29 May 2018** - Caldbeck Parish Council writes to Katherine Fairclough, Chief Executive Cumbria County Council, asking for documents under Freedom of Information referred to in Cumbria County Council's 14 May 2018 correspondence, with a statutory deadline of 27 June 2018 ([here](#)).

**10 July 2018** - Cumbria County Council provides its response to 29 May 2018 request for documents. It refused to release the independent reviewer's original report claiming exemption ([here](#)).

**2 August 2018** - Having taken advice from the Office of the Information Commissioner, Caldbeck Parish Council asks Cumbria County Council to look again at the non disclosure of the independent reviewer's original report, requesting a response by 16 August 2018 ([here](#)).

**16 August 2018** - Cumbria County Council concludes that it has correctly followed procedures and confirms it will not release the independent reviewer's original report ([here](#) and [here](#)).

**21 August 2018** - Caldbeck Parish Council writes to the Information Commissioner to ask for a review of Cumbria County Council's refusal to release the independent reviewer's original report.

**Letter to Information Commissioner ([here](#)) and documents attached:**

- July 2011 version 4 of the Cumbria County Council Corporate Compliments, Comments and Complaints Procedure ([here](#)).
- 10 December 2017 Caldbeck Parish Council to Cumbria County Council requesting review of the County Council's decision not to support the footpath and that the Parish Council make use of public participation to present its case to Council ([here](#)).
- 15, 20 and 21 December 2017 Cumbria County Council to Caldbeck Parish Council - emails. The County Council treated the Parish Council's letter as a complaint and made arrangements to investigate the complaint under its complaint procedures ([here](#)).
- 5 February 2018 Caldbeck Parish Council's brief for Dan Barton in preparation for meeting on this date ([here](#)).
- 26 February 2018 Dan Barton email to Caldbeck Parish Council, stating he had submitted his completed report to the Chief Executive ([here](#)).
- 2 April 2018, 3 May 2018 and 11 May 2018 Caldbeck Parish Council to Cumbria County Council - letters and email sent requesting release of the outcome of the County Council's investigation of the Parish Council's complaint under Freedom of Information ([here](#), [here](#) and [here](#)).
- 14 May 2018 Cumbria County Council to Caldbeck Parish Council results of investigation of complaint ([here](#) and [here](#)).
- 29 May 2018 Caldbeck Parish Council to Cumbria County Council requesting documents under Freedom of Information legislation ([here](#)).
- 10 July 2018 Cumbria County Council to Caldbeck Parish Council response to Freedom of Information request ([here](#) and [here](#)).
- 2 August 2018 Caldbeck Parish Council to Cumbria County Council requesting review of decision to claim exemption from releasing report dated 21 February 2018 ([here](#)).
- 15 and 16 August 2018, Cumbria County Council to Caldbeck Parish Council responses to request for meeting and results of internal review ([here](#) and [here](#)).
- 21 August 2018 Caldbeck Parish Council to Cumbria County Council, requesting review of the appropriateness of using Environmental Information Regulations given the Parish Council requested information under Freedom of Information legislation ([here](#)).

**October 2018 to March 2019** - Attempts by Angela Jones, Assistant Director Cumbria County Council, to act as mediator between the landowners and Caldbeck Parish Council, aiming to secure agreement for a footpath. Mediation was rejected by the landowners. Also discussions between Cumbria County Council and Caldbeck Parish Council to see if a part footpath might be established where there is agreement and whether County Council Highways would be able to mitigate risks where walkers would join the lane. Discussions on the part path were inconclusive.

**15 March 2019** - Office of the Information Commissioner issues decision notice requiring Cumbria County Council to disclose the independent reviewer's original report by 21 April 2019 ([here](#)).

**24 April 2019** - Caldbeck Parish Council writes to Cumbria County Council advising that unless it receives the independent reviewer's original report by 26 April 2019, it would inform the Information Commissioner of the County Council's failure to comply with the statutory deadline which would lead to the County Council being held in contempt of court ([here](#)).

**26 April 2019** - Ben Spencer, Cumbria County Council Legal Services, provides independent reviewer's original report, together with his explanatory note for disregarding the original report and preparing a second report ([here](#) and [here](#)).

**May 2019** - Attempts by Mike Johnson, Cumbria County Councillor, to act as mediator between the landowners and Caldbeck Parish Council, aiming to secure agreement for a footpath. Mediation was rejected by the landowners.

**15 June 2019** - Caldbeck Parish Council writes to Katherine Fairclough, Chief Executive Cumbria County Council, in light of the independent reviewer's original report, commenting upon the explanation provided on 26 April 2019 by the County Council's Solicitor and proposing a collaborative approach ([here](#)).

**12 July 2019** - Angela Jones, Corporate Director Cumbria County Council, writes to Caldbeck Parish Council saying Cumbria County Council could not commit to underwriting legal costs ([here](#)).

**20 September 2019** - Angela Jones, Corporate Director Cumbria County Council, writes to Caldbeck Parish Council saying that without landowners' agreement, Cumbria County Council would not proceed with a Footpath Creation Order ([here](#)).

**November to December 2019** - Caldbeck Parish Council asks parishioners for their views on the footpath as part of budget consultations ([here](#) and [here](#)).

**16 December 2019** - Caldbeck Parish Council agrees to use Cumbria County Council's public participation procedures to ask a question at the County Council's full meeting seeking County Councillors' support for the footpath.

**3 January 2020** - Cumbria County Council refuses to allow Caldbeck Parish Council's question ([here](#)).

**13 January 2020** - Caldbeck Parish Council agrees to issue its press notice.

#### **Website**

<http://www.caldbeck.org.uk/>

Footpath documents

<http://www.caldbeck.org.uk/parish-council/key-documents/>

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