

# Hesket Newmarket to Caldbeck

## Footpath Creation Order – Decision Review

*Reviewer: Dan Barton, Assistant Director – Learning and Inclusion, 26.04.18*

### **Overview of situation**

- 1.1 In March 2017, Caldbeck Parish Council put forward a request to create a footpath between Caldbeck and Hesket Newmarket. The proposed footpath passes through a number of fields and other pieces of land owned by several landowners.
- 1.2 At the time that the idea of the creation of the footpath was conceived, support from all of the landowners was gained. Subsequent to this, two landowners withdrew their support for the footpath.
- 1.3 The withdrawal of consent meant that a footpath creation order would have been necessary in order to oblige the landowners in question to create the footpath. This can be led by a number of agencies (for example: Lake District National Park, County Council).
- 1.4 At this point, a decision was made not to proceed with a footpath creation order. This was an officer decision, but supported by portfolio holders; a history of the decision-making is found below.
- 1.5 The decision not to proceed with the footpath creation order centred around the exposure to financial risk made necessary by the withdrawal of consent from two of the landowners; there is a risk that a footpath creation order could be challenged by landowners, resulting in a judicial review. Similarly, funding being offered only covered the cost of the footpath, with no surplus for any of the potential legal work. This would be costly to the council, with no guarantee of positive outcome, and was seen to be an unjustifiable risk.

### **Summary of complaint**

- 2.1 The complainants (Caldbeck Parish Council) made representations to the council to express disappointment with the decision and to request that the decision be reviewed or changed.

2.2 On 5<sup>th</sup> December 2017, the Parish Council attended Local Committee to make representations in relation to the above. The case was heard by the committee; reference was made to the fact that, as an officer decision, the committee could not make changes to the decision that had been made.

2.3 The Parish Council wrote to the Chief Executive on 6<sup>th</sup> December 2017 to request that attention be given to the situation, with a view to requesting that the decision be reviewed.

2.4 Subsequent to the representation to Local Committee, the Parish Council requested to attend a Cabinet meeting under the Public Participation Scheme. On 18<sup>th</sup> December, the Parish Council were informed by the Monitoring Officer that they would not be permitted to ask a question at Cabinet as the Public Participation Scheme did not allow the say question to be asked more than once in a 12 month period. As the question had already been asked at Local Committee, it could not be asked again at the Cabinet meeting within the same 12 months.

2.5 The Monitoring Officer made clear, in an e-mail of 9<sup>th</sup> January, that, whilst the Parish Council felt that they had not been properly informed of the fact that a question could not be asked twice, under the conditions of the Public Participation Scheme, this fact would not necessarily disadvantage the Parish Council, as further options remained open – namely the corporate complaints process.

2.6 The Parish Council's complaint is:

- i) The officer decision not to proceed with the footpath creation order was not correct.
- ii) The refusal to have the question heard by cabinet or full council is not fair and the process was not made properly clear by the relevant personnel within Legal and Democratic Services.

2.7 The parish council feel that they were not properly informed that the question could not be asked at cabinet or full council for a period of 12 months subsequent to being heard at Local Committee.

## **Methodology**

3.1 In order to form an opinion about the decision-making process in this case, the reviewer has:

- Read e-mail correspondence

- Seen notes of joint portfolio-holder meetings
- Spoken with relevant Council Officers including AD Economy and Environment and Monitoring Officer
- Read the Public Participation Scheme policy
- Made contact with the clerk of the Parish Council
- Met with a delegation of the Parish Council
- Visited the site of the proposed footpath
- Spoken to one of the landowners who withdrew consent.

3.2 The findings in this report address the decision-making process, rather than the decision itself.

## **Decision-making history**

4.1 The reviewer visited the location of the proposed footpath on 7<sup>th</sup> September 2017.

4.2 The decision not to proceed with the footpath creation order was an officer decision, made by Angela Jones – AD Economy and Environment. The case was discussed at a joint portfolio-holders meeting with officers and elected members on 11<sup>th</sup> September 2017.

4.3 The County Council's Scheme of Delegation is clear that the officer (Corporate Director for Economy and Highways or representative, in this case, Angela Jones) has delegated authority to discharge all County Council functions relating to countryside access (ref: Scheme of Delegation – section 6.22 (b)).

4.4 Notes from the discussion specify that that the officer advice was that a creation order would not be pursued.

## **Review**

5.1 Subsequent to receiving a letter from the Parish Council on 6<sup>th</sup> December 2017, the Chief Executive commissioned a review tasked with finding out whether the decision-making process was appropriately followed.

5.2 The reviewer visited the Parish Council in Caldbeck on 5<sup>th</sup> February 2017.

5.3 Objectively, the reasons that local residents feel that the creation of a footpath would be advantageous are clear (safer travel for pedestrians, advantages to physical and mental health etc.).

5.4 However, the lack of consent from two landowners and high potential legal costs, relating to a possible judicial review, mean that the footpath, and potential creation order, present an unacceptable financial exposure to any organisation agreeing to support a footpath creation order. Furthermore, no resources would be provided to Cumbria County Council to cover the costs of the footpath creation order nor was any indemnity offered in respect of any further challenge.

## **Findings**

6.1 It is the finding of the reviewer that the decision-making process was followed appropriately.

6.2 However, there are a number of learning points throughout the decision-making process where greater clarity might have been achieved:

- i) The officer decision was recorded in the form of notes from meetings.
- ii) The Parish Council felt that the fact that it would not be possible to have a question heard by different bodies within a 12 month period was not made sufficiently clear. This is clear under the under the public participation scheme, but the Parish Council maintain that no explicit reference to this fact was made until after their question was heard at Local Committee. N.B. The Scheme is published in the Constitution and therefore available to the public.

## **Recommendations**

1. Ensure a consistent and formal record is made of all decisions.
2. In future, ensure that complainants or other members of the public wishing to engage in the public participation scheme are fully apprised of the limitations to escalation as described and directed to the location of the published Constitution.