

Original report prepared by Dan Barton, Independent Reviewer 21 February 2018

Caldbeck Footpath – Complaint Review

Summary

Members of Caldbeck Parish Council want to create a footpath between Caldbeck and Hesket, with the purpose of making the journey on foot between the two villages safer and more pleasant.

The Parish Council have been gifted £100,000 from a resident to facilitate the creation of the footpath, in memory of her late husband.

The creation of the footpath was proceeding very well until one of the landowners, through whose land the path will pass, withdrew consent. A second landowner also withdrew consent after this. There are currently 8 of 10 landowners in support of the path. The path cannot now be created without support from a body with the powers to compel the landowners to allow the path to be created.

As such, the Parish Council have made requests to the Lake District National Park (LDNP) to ask for a footpath creation order. The LDNP refused to provide support, citing potential exposure to financial risk. They have, however, made it clear that they would support any eventual building work for a footpath created following a creation order from another body.

The matter was brought to the Local Committee in Allerdale to request support for a Footpath Creation Order in December 2017. The Local Committee have stated that the footpath has merit. However, it was noted that the Footpath Creation is a power of the council, and not a duty. For a number of reasons the decision has been made not to proceed with an order. In summary these are:

- Risk of formal objection from the two landowners not in support. This could result in a Public Enquiry or Judicial Review, which could be costly to defend (less for the former than for the latter).
- Regarding the above, any review which found in favour of the two landowners would likely find that the party bringing forward the order would also have to pay for legal costs for the landowners. This has been roughly calculated to be £30,000 (£10,000 per party).
- Recent experience relating to footpaths in the North of the County which ran across a rich landowner's property who obstructed the creation of the paths at great cost to the council.

The Parish Council were disappointed to hear that they would not be able to bring the issue before full council for 12 months, because the item had already been discussed at Local Committee. There is a feeling within the group that this was a decision which had been made prior to the item being heard officially. They cite the lack of opportunity to contribute towards the conversation. The group have also implied that the inability to take the item to full council was not advertised to them before they took the issue to Local Council and are frustrated that they have been prevented by this from having the issue heard at the right level.

Consequently, the Chair and Clerk of the Parish Council wrote to the Chief Executive of the County Council in December 2017, to request her intervention in the process, in the form of an official review of the situation by either herself or an Assistant Director in a position unrelated to the matter.

Review

To review the situation, I have read all of the relevant documentation, and have either discussed with or received information from colleagues in Economy and Environment, and Highways, Transport and Fleet. I also visited the Parish Council to discuss the matter with the Chair and Clerk. As part of this visit, I undertook an inspection of the proposed site, and have concluded the following:

- The proposal has merit
- The Parish Council have not had the opportunity to escalate their concerns in the way they had hoped.
- There is a risk of significant negative publicity for the County Council if we do not support the project.
- There is a risk of financial liability to the County Council if unsuccessful.

Risks

If the County Council agrees to support a footpath creation order, and the two landowners decide to contest, then a Judicial Review, with associated legal costs, would be the convened. The review could find in favour of the landowners, leaving the Council with legal costs to pay, and no footpath.

Not to support a footpath creation order would protect the Council from financial exposure as detailed above. However, it is likely that there would be negative press coverage, and possible reputational damage. This would be due in large part to the fact that the funding for the project is covered, in its entirety (exclusive of possible legal fees) by the sum donated, which would be withdrawn in the event of non-action.

Opportunities

If the County Council agreed to support a footpath creation order, this would be an important gesture, likely to be well-reported in the press, even if the landowners successfully challenge.

A Public Enquiry or Judicial Review which found in favour of the landowners at cost to the Council would also enable any future requests of this type to be turned down, if necessary, with reference to the precedent.

The Parish Council have made it clear that they will remain responsible for the ongoing maintenance of the path, including surfaces and hedging.

Finally, the creation of the footpath would be of benefit, in terms of safety, accessibility and public health, if successful.

Scenarios

Action	Outcome	Cost/Benefit
1. CCC support footpath creation order, landowners capitulate.	Footpath created.	No financial cost Reputation enhanced Footpath's benefits realised
2. CCC support footpath creation order, landowners challenge, Judicial Review takes place, challenge rejected.	Footpath created.	Up to £10,000 cost to Council Reputation enhanced Footpath's benefits realised

3. CCC support footpath creation order, landowners challenge, Judicial Review takes place, early indications show that challenge is likely to be upheld, Council ceases activity and minimises legal costs.	Footpath not created.	Financial cost above £10000 and below £30000 Reputation enhanced No benefit to locals Precedent established.
4. CCC support footpath creation order, landowners challenge, Judicial Review takes place, challenge upheld.	Footpath not created.	Financial cost = c.£30000 Reputation enhanced No benefit to locals Precedent established.
5. CCC do not support footpath creation order, £100,000 donation lost	Footpath not created.	No financial cost Significant possible reputational damage. No benefit to locals No precedent established.

In options 1 and 2 above, it is possible, but not probable, that the landowners stage disruptive protests in opposition to the Judicial Review.

Conclusion

Given the above, the reviewer recommends that the Chief Executive review the decision not to proceed, and proceeds with the Footpath Creation Order as detailed.

Considerations for the Chief Executive or other officers would be needed in relation to:

- Officer time in relation for preparation of documentation for DCNR
- Applying pressure to the Lake District National Park in order to gain support for the creation order
- Consideration could be given to a “footpath creation **agreement**” which would create the footpath on the stretches of land for which there is approval, with lighting on the road for the stretches which do not have approval. There is a significant potential Health and Safety consideration here, which is currently being investigated by the highways team.