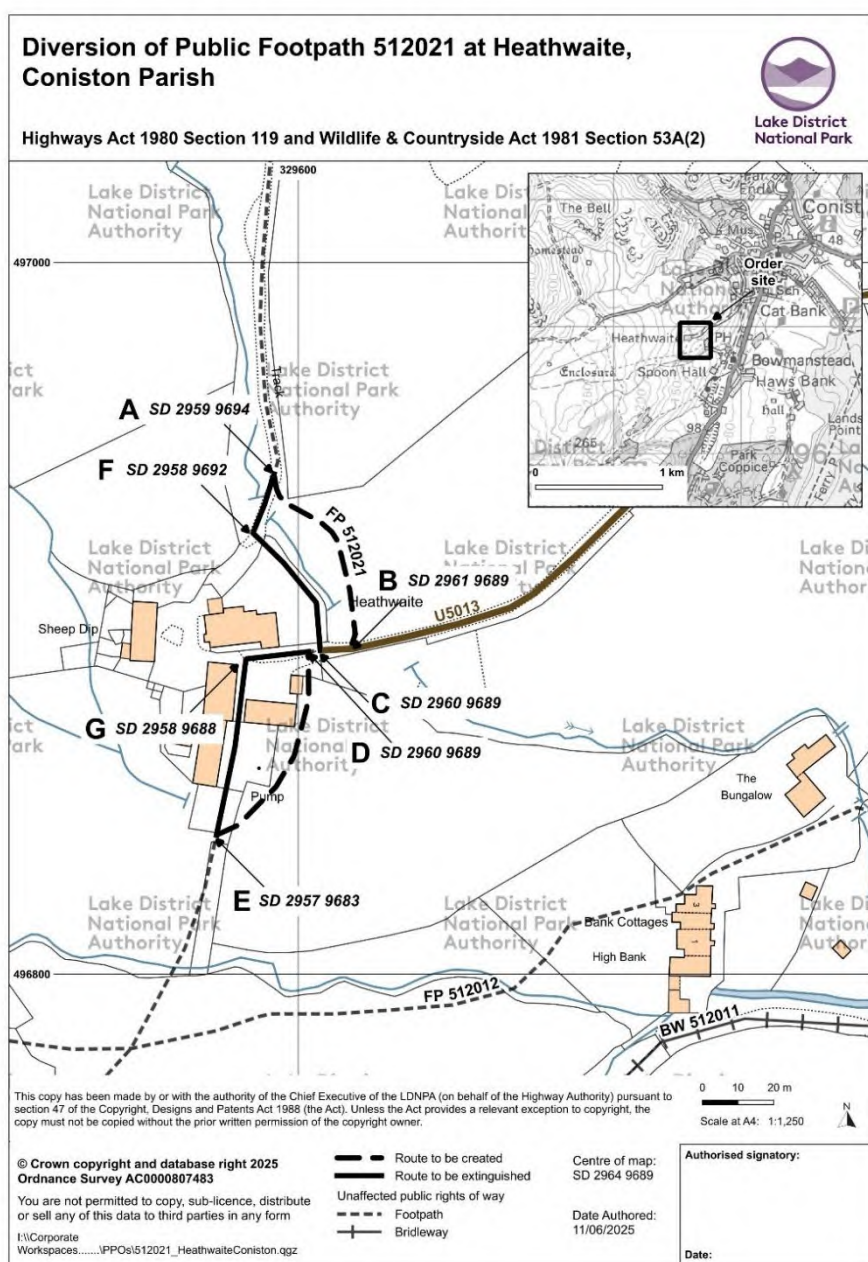


## Diversion of Public Footpath 512021, Heathwaite, Coniston Parish

### 1 Summary

1.1 The landowner at Heathwaite, Coniston Parish, has applied to divert parts of footpath 512021. This report discusses whether it is expedient to make an order in accordance with this application. Plans showing the possible options for diversion are below. Photos and descriptions of the existing footpath and diversion options are included in the Assessment Report.

**Recommendation that:** *We make an order diverting sections of footpath 512021 replacing A-F-C with A-B and D-G-E with D-E*



Plan 1 – Options 4.1a/b



### **3. Policy Context**

- 3.1. The Vision for the Lake District National Park sets out our aspirations for what we hope to achieve by 2030. To summarise, these are to have a landscape which provides an irreplaceable source of inspiration, whose benefits to people and wildlife are valued and improved; a landscape whose natural and cultural resources are assets to be managed and used wisely for future generations.
- 3.2. The Partnership's Plan contains the policies and actions for achieving the aims of the Vision. The main delivery aim in the Partnership's Plan for access and rights of way is to make the most of the landscape and nature as the backdrop for outdoor leisure experiences for all, particularly the next generation of returning visitors, from relaxing and tranquil, to adventurous and exhilarating.
- 3.3. Our Business Plan 2024-2027 states what actions will be taken as the National Park Authority plays its part, in partnership with others, in realising the Vision. The core Access & Recreation Action is to deliver the 'improve, maintain, promote and integrate elements' of the 'Out There' Strategy to deliver infrastructure and services which focus on serving under-represented groups (as identified by the 'Lake District for Everyone' Key Outcome Group).
- 3.4. The Strategy & Ranger Service Plan contains the priorities for our service, including Contributing to World Class Visitor Experiences. This aims to achieve a programme of activity that will implement the adopted Cumbria and the Lake District Access and Recreation Strategy.
- 3.5. Our charging policy was agreed at Authority in August 2006, and the actual charges updated regularly since then (most recently in 2024).

### **4. Options**

#### 4.1

- a. Make the recommended order so the route of the footpath follows the A-B-C-D-E route (Plan 1) – diverting both sections included in the application
- b. Make a Diversion order so the route of the footpath follows the A-B-C-D-G-E route (Plan 1 excluding the D-E diversion option)
- c. Make a Diversion order so the route of the footpath follows the A-F-G-E route (Plan 2)
- d. Do not make a Diversion order and seek to open up the definitive line

#### 4.2 *Additional options if options 4.1a or b is selected:*

- e. Vary proposed alignment of A-B to include a zigzag on the slope
- f. Require the owner to provide a wider surfaced width or alter the top-dressing of the surface between A-B and / or D-E

## 5. Proposals

- 5.1. I recommend option 4.1a. In my view there are valid grounds for diverting the footpath onto the proposed new sections A-B and D-E and they meet the legislative tests, as detailed in the assessment report. DEFRA guidance suggests we should be pre-disposed to make and confirm diversion orders where rights of way pass in close proximity to domestic properties and farmyards if the relevant tests are satisfied (see paragraphs 52-53 of the assessment report). As detailed in Annex 2 it appears likely that the recorded definitive line here is incorrect – so a diversion to a route which appears in the interest of the applicant and acceptable to the public would resolve this situation.
- 5.2. Option 4.1c would be in the public interest, and would meet the legislative tests for diversion, but would not be the preference of the owner. In my view it would go against the DEFRA guidance regarding giving due weight to the impact of rights of way on owners.
- 5.3. I do not recommend option 4.1d. The recorded definitive line of the footpath is likely to be incorrect, but it is indeterminate which is the correct route. The recorded definitive line would be difficult to open up due to both natural (exposed bedrock) and manmade features (steps would need to be created in garden wall). A diversion to any of the other options would resolve the situation here, 4.1d would not.
- 5.4. I do not recommend the additional options 4.2e and 4.2f – in my view the recommended diversion routes are adequately easy to use in the context of the surrounding rights of way network and these alterations are not necessary.

## 6. Demonstrating Best Value

- 6.1 **Work Programme and Relevance to This Case:** Our processes and priorities are designed to deal with applications for diversions in as timely a fashion as possible and these are a core element of the Rights of Way team's work. Although making changes to rights of way is a power rather than a duty of order-making authorities, it is expected that at some stage 'Right to Apply' regulations will come into effect which will require authorities to consider and make decisions on applications to change rights of way in a prompt manner.
- 6.2 Considering applications for changes to the network which appear to be in the interests of the landowner or the public (or both) is part of effective management of a rights of way network, which is a role delegated to us under our agency agreement with Westmorland and Furness Council.

6.3 In this case there is a query over the correct definitive line of the footpath, and a diversion would clearly define where the right of way goes in the future.

6.4 The best value implications are:

- a) The **challenge** is for us to achieve our policies without significant financial or staff implications. The proposed diversions is a pragmatic method of resolving the alignment of the footpath in a timely and cost-effective way.
- b) We have **compared** our casework completion rates with other authorities, and with regard to staffing levels, we have similar resolution rates.
- c) We have **consulted** user bodies, the Unitary Authority, Parish Council, Local Access Forum, and other interested parties as part of the process, their responses and our comments are shown in the Assessment Report.
- d) Processing public path orders is not a **competitive** procedure. Westmorland and Furness Council can also process orders, but we are more closely connected with the day-to-day management of the network and so can act more effectively.

## 7. Finance Considerations

7.1. Our charging policy is below:

**For orders under the Highways Act 1980 that are wholly or partly in the public interest, the charges may be negotiable according to the extent to which the public will benefit from the proposal in relation to the benefit derived by the applicant – see below.**

- **The total cost of a diversion is the sum of the costs involved in administration, advertising and works on the ground.**
  - **The exact amount to be waived will depend on the circumstances of each case and will be negotiated with the landowner(s).**
1. Where an order is predominantly or wholly in the interests of the public, up to 100% of the total cost will be waived.
  2. Where an order is partly in the landowner's interest, and partly in the public interest, up to 75% of the total cost will be waived. The higher the level of public interest, the greater the percentage that will be waived.
  3. Where an order is predominantly in the interests of the landowner but would result in some small public benefit then up to 25% of the total cost may be waived.
  4. Where an order is wholly in the interests of the landowner - none of the total cost will be waived.

- 7.2 If option 4.1a (or 4.1b) is selected the diversion to the applicant's proposed route A-B would be in the interest of both the landowner and public and the proposed diversion from D-G-E to D-E would be in the interest of the landowner. As a diversion will resolve the indeterminate route of the footpath through the northerly part of the property it seems appropriate that half of the administrative and legal costs of the order (estimated at £3,150) should be waived (category 2 in box above), with the applicant meeting the costs of the two newspaper adverts giving notice of the order (which we have estimated at £400). The only remaining physical works required would be to remove the gate at point D – the applicant would do this in conjunction with moving the main entrance gate. The applicant and Ranger Team Leaders have agreed in principle to this proposal for meeting the costs should this order proceed.
- 7.3 If a decision is made that we should divert the footpath onto the farm track (option 4.1c) this would be in the interest of the public and against the wishes of the owner (though arguably potentially still in their interest as the right of way would be moved out of their garden). It is unlikely the owner would feel the diversion was being made in their interest and agree to meeting any of the costs (category 1 in box). They may argue that use by the public of the track represented a greater depreciation of their interest in the land than an unusable route through their garden and seek to claim compensation on this basis.
- 7.4 If an objection to the order is received and not withdrawn the case would be submitted to the Secretary of State for determination, this would involve additional costs (varying dependent on whether the case is resolved via written representations, a public hearing, or public inquiry). If the objection were to an order diverting the northern section of the footpath (A-B or F-G), which would in our view have been made in part in the public interest we would probably agree to meet these additional costs. If an objection were made to a diversion of the southern section (D-E) then we would probably expect the owner to meet the costs or abandon this part of the order.

## **8. Risk**

- 8.1. There is a risk that the order may be objected to. This risk has been mitigated as far as possible through consultation. The Open Spaces Society have noted concerns in their response to the consultation, in particular regarding the gradient between A-B, and it is possible that some users who have used the farm track in the past may object on the basis that they would prefer a diversion to this route (F-G). As detailed in the assessment report my view is that the legislative tests for diversion are satisfied by both options. Whether a different diversion route would be more favourable would not be a relevant objection once an order had been made. This diversion order would not prevent anyone from making an application to record the farm track as an additional public right of way if sufficient evidence of use as of right were provided.

- 8.2. If option 4.1c is selected it is possible that the owner may object to the order or following confirmation of the order seek to claim compensation (under the provisions of Section 28 of the Highways Act 1980). They would need to demonstrate that the diversion depreciated the value of their interest in the land or disturbed their enjoyment of the land (see 7.3).

## **9. Legal Considerations**

- 9.1. The order would be made under section 119 of the Highways Act 1980. We are able to make orders under this section by virtue of schedule 9, paragraph 11 of the Environment Act 1995. The modification element will be made under section 53A(2) of the Wildlife & Countryside Act 1981, and we have powers to make such orders under our Agency Agreement with Westmorland and Furness Council. The proposed action in my view strikes a reasonable balance between private and public rights.
- 9.2. Annex 2 explains my view that the recorded definitive line is likely to be incorrect between A-F-C. A Definitive Map Modification Order (DMMO) could be considered where we believe the definitive map or statement are incorrect. A DMMO could only modify the map the footpath based on evidence that it should have been recorded elsewhere. Clearly establishing where the right of way 'should' have been recorded is difficult to determine in this case. The outcome may be a similar route to the applicant's proposed route A-B, and if not the applicant may still wish us to consider a diversion onto their proposed routes anyway. It therefore appears logical and more efficient to make a diversion order if we consider that the legislative tests are satisfied and that the order would be both in the applicant's and public's interest.

## **10. Human Resources**

- 10.1. The work involved in this proposal is approximately 70 hours from members of the Ranger teams, one hour from the GIS Data Officer, and one hour from a member of Legal Services. The work involved is all part of our day-to-day duties, and much of it has already been undertaken.
- 10.2. If the order receives objections and is submitted to the Secretary of State for determination this will require additional work from the Rights of Way staff and potentially legal services depending on whether it is determined via written representations, a public hearing or a public inquiry.

## **11. Diversity Implications**

- 11.1. I have not identified any significant diversity implications resulting from any of the options under consideration.

**12. Sustainability**

12.1. I have not identified any significant environmental, economic or social sustainability issues resulting from the proposals under consideration.

<b>Background Papers:</b>	Case file reference 1412.512.08
<b>Author/Post:</b>	Will Hinchliffe, Rights of Way Officer
<b>Responsible Director:</b>	Stephen Ratcliffe, Sustainable Development
<b>Date Written:</b>	18 June 2025



## **DIVERSION OF PUBLIC FOOTPATH 512021, HEATHWAITE, CONISTON PARISH**

### **ASSESSMENT REPORT**

#### **BACKGROUND**

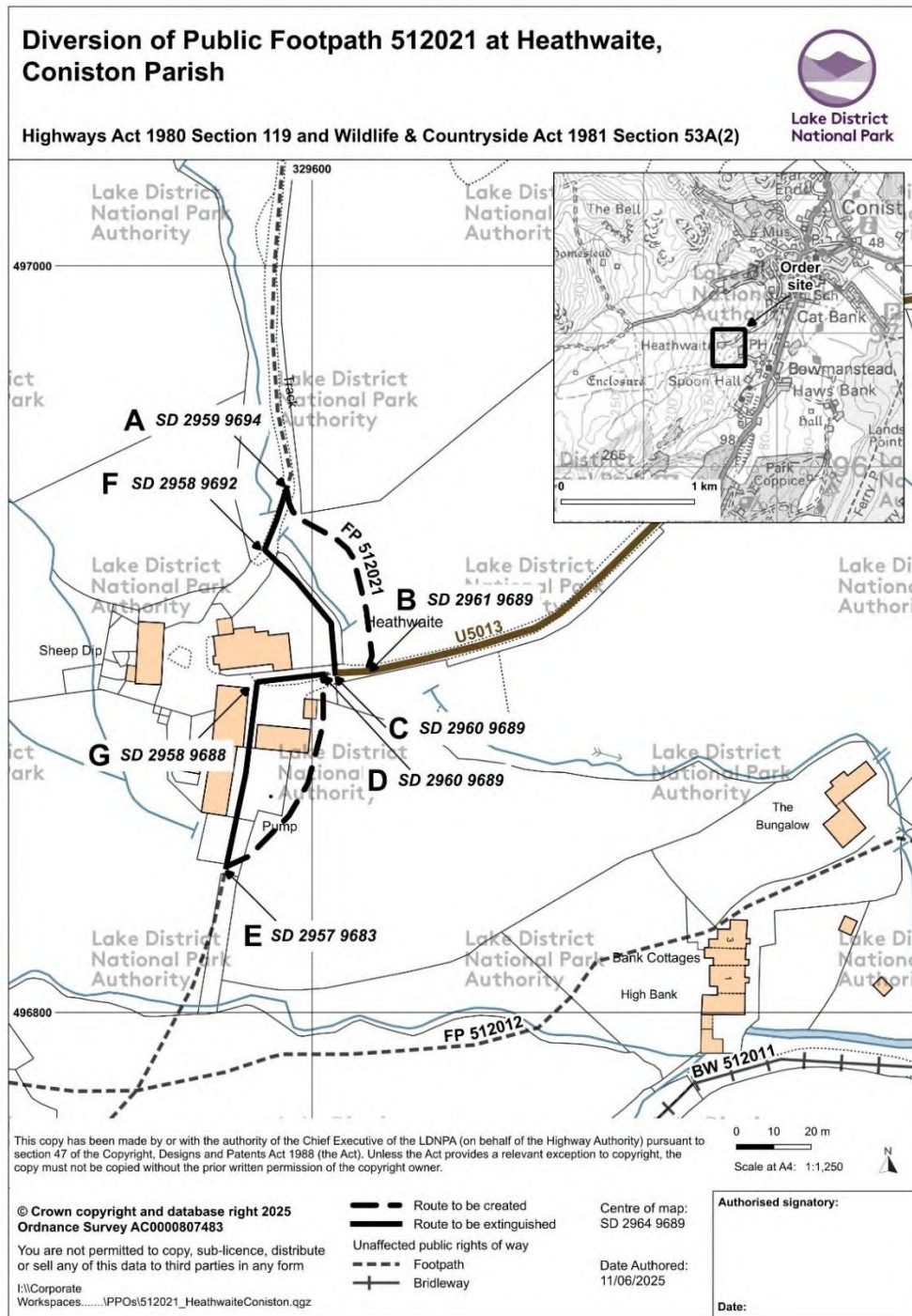
1. We undertook a couple of site visits to Heathwaite last year following a query regarding the definitive line at the property and confirmed that the definitive line of footpath 512021 was obstructed and discussed potential options for diversion with the owner. Following this the owner has completed an application for a diversion. The current owner moved to the property around 5 years ago.
2. During our site visits we discussed:

#### **Diversion from A-F-C to A-B**

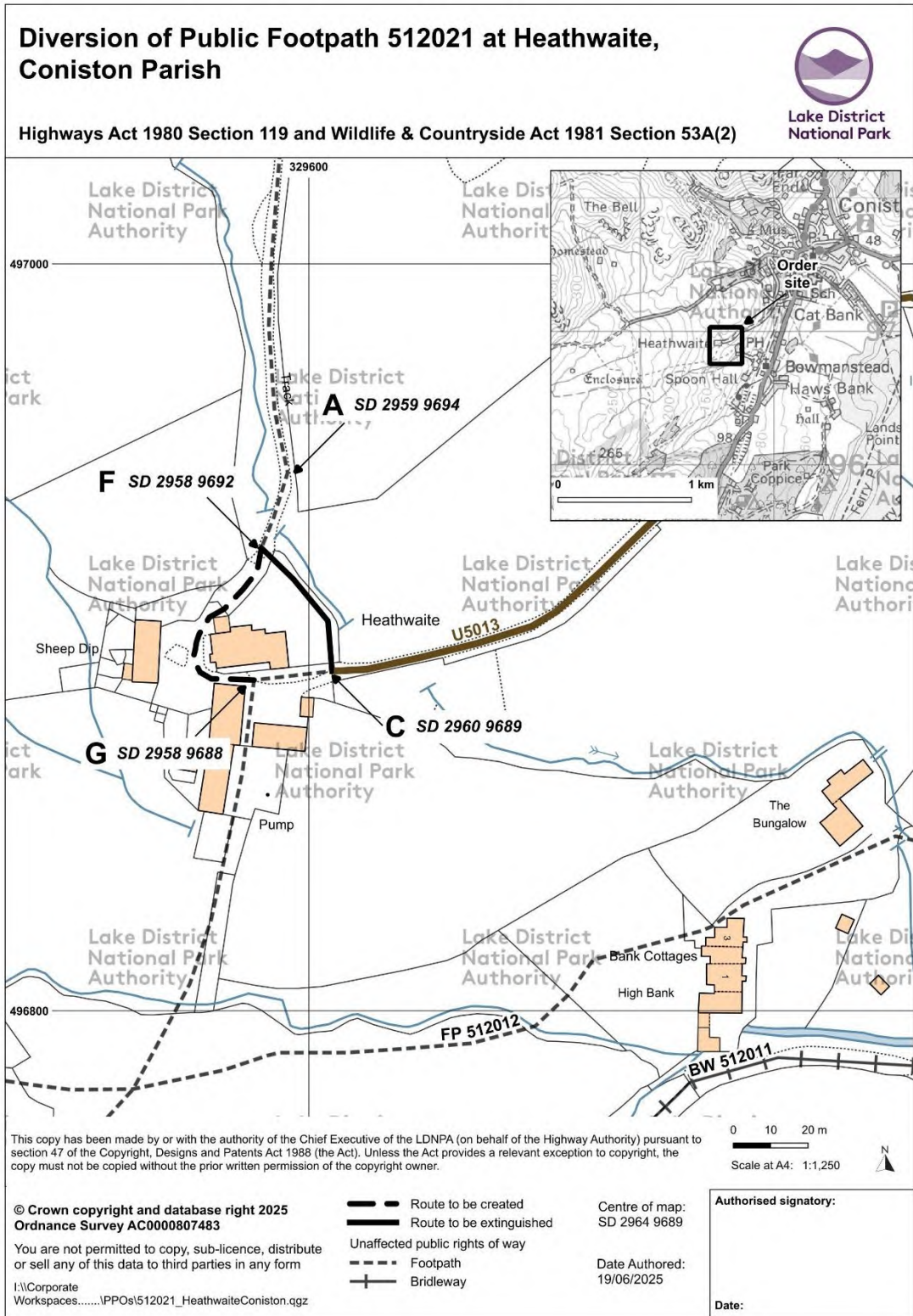
3. The current recorded definitive line of the footpath between points A-F-C follows a route which is physically difficult to use (see photos and route description in paragraph 7). It appears unlikely that the route shown on the definitive map was ever in use by the public, and during our subsequent consultation no-one responded to state that they had used this route.
4. During previous ownership the route using the farm track between points F and G does appear to have been in use by some members of the public (described in paragraph 9). If an application were received for a Definitive Map Modification Order (DMMO) or evidence regarding use 'as of right' were provided to us we would need to investigate this and make a decision as to whether a DMMO should be made to divert the footpath onto this route or that an additional public right of way should be recorded along the farm track. This possibility was discussed with some consultees (primarily the parish council) during the consultation process, but we have not received an application.
5. Since moving to the property, the owner has discouraged use of the farm track (F-G) and waymarked the route shown between points A and B; they would like the footpath to be diverted onto this route. The landowner states that they believed the proposed route was always the route in use when the previous owner lived there and were not aware that the legal line went through the garden. Since making their application they have undertaken surfacing works on their preferred route.

### Diversion from D-G-E to D-E

- The applicant would also like us to consider a diversion between points D-E. they have surfaced a fenced off route which passes through the corner of a field. They state that this diversion would aid their and their guests' privacy (a couple of the buildings at Heathwaite are available as holiday accommodation) and would be an improvement in terms of safety / liability reducing the interactions between footpath users and vehicle movements in the yard.



Plan 1 – Options a/b



*Plan 2 – Option c*

## OPTIONS OPEN TO US

6.
  - a. Make the recommended Diversion order so the route of the footpath follows the A-B-C-D-E route (Plan 1) – diverting both sections included in the application
  - b. Make a Diversion order so the route of the footpath follows the A-B-C-D-G-E route (Plan 1 excluding the D-E diversion option)
  - c. Make a Diversion order so the route of the footpath follows the A-F-G-E route (Plan 2)
  - d. Do not make a Diversion order and seek to open up the definitive line

*Additional options if option a or b is selected:*

- e. Vary proposed alignment of A-B to include a zigzag on the slope
- f. Require the owner to provide a wider surfaced width or alter the top-dressing of the surface between A-B and / or D-E

## DESCRIPTIONS AND PHOTOS OF ROUTES





### **Recorded definitive line between points A-F-C (option d) – about 57m long**

7. From point A the definitive line passes a short distance along a well-surfaced track along the northern perimeter of the property to point F before turning southeast through a fence (P1) and over a rough, rocky outcrop overgrown with vegetation. Descending from the outcrop to the lawn is a slide, whether this should be considered a further obstruction or an aid to passage may depend on the user (P2). The footpath then descends the lawn to a further fence and hedge, beyond which there is a drop off a stone wall approximately five feet high close to point C, where the footpath then turns right on the well-surfaced track towards point D (P3-5). Note that there is a set of steps descending from the garden and exiting via a wicket gate, but these are closer to the house and not within the definitive line.

P1







Definitive line turns southeast off surfaced track at point A and goes through fence into garden

P2		<p>View back up from garden, definitive line heads through fence and down rock outcrop, slide is within the definitive line</p>
P3		<p>View southeast down garden lawn, from close to slide, definitive line follows the fence line</p>
P4		<p>Recorded definitive line heads through hedge and fence close to telegraph pole and off a wall</p>
P5		<p>Photo facing northeast from close to point D. Recorded definitive line heads up / down the wall in the corner (close to post). There is a wicket gate and set of steps into the garden, but these are not within the recorded definitive line</p>

**Proposed route between points A-B (options a or b) – about 57m long**


- 8. This leaves the track through a 1m wicket gate (point A, P6) and descends a surfaced path (1.25m surfaced width, 1.8m including verges), to the public-road (U5013) at point B (P7-9). A-B-C-D is approximately 69 metres. To the side of this path is a beck lined by large oak trees.

P6		Proposed route leaves track through gate on left at point A
P7		Views back northwest towards point A along the now surfaced track, several cross drains have been added

P8		View north from point B
P9		View towards Coniston Water from between points A and B

**Farm track route between points A-F-G (option c) – about 74 metres long**



9. The farm track is fairly wide (minimum of approximately 2.5 metres where it passes between the buildings) and has a firm, stony surface (P10-12). There are no gates or other obstacles on this route.

P10		Track descending southwest of point A
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P11	 A photograph showing a gravel track curving between stone farm buildings. A white wooden fence is on the left, and a yellow traffic cone is on the track. The buildings are made of grey stone with dark roofs.	The track curves between the buildings
P12	 A photograph looking east between stone buildings towards a field gate. A gravel path leads through a field gate between two stone buildings. A blue car is visible in the distance through the gate.	Looking east between buildings towards point G




**Definitive line between points D-G-E (options b or d) – about 68m long**

10. The current definitive line passes through the farm buildings from the main east-west track turning south at point G down a smaller lane between buildings through a field gate (which is generally kept open) into another yard / storage area and continues to a wicket gate. The surface within the farmyard is hard with stone chippings and concrete. To the south of the wicket gate the surface is grassy.

P13	 A photograph showing a narrow gravel path between two stone walls. In the background, there is a white building with a red door and a wooden fence.	View south-southwest through lane between buildings, just south of point G
P14	 A photograph showing a gravel path between two stone buildings. On the right, there is a cement mixer and some equipment.	View north-northeast along definitive line between points G and E, area with cement mixer is used by vehicles at times

**Proposed route between points D-E (option a) – about 62m long**

11. The proposed route would have users leave the farm track at point D through a field gate (P15, the applicant has suggested that if the order proceeds they would remove this, re-siting the main gate on the track just west of point D). The proposed route then follows a 1.25m wide surfaced path (1.8m with verges) heads south and west to a new wicket gate at point E (P16-17).

P15		Gate on the right of this photo (facing east-southeast) is where the proposed route would leave the track (point D).
P16		View north towards point D along the proposed route
P17		Facing southwest towards wicket gate (1m) which has been installed at point E

### GROUNDS FOR A DIVERSION ORDER

12. The grounds and tests for a diversion are slightly different at the making and confirmation stage. However, as we have discretion as to whether to make an order in the first place, it would be unwise to make an order whilst ignoring something that could prevent an order from being confirmed. Therefore, the issue should be considered in the whole, and the factors to take into account are set out and discussed below. These factors incorporate our own policies on changes to the rights of way network which are set out in Annex 1.

13. There are only two grounds for a diversion of a right of way (section 119, Highways Act 1980), namely where it appears to the Authority that it is expedient to do so:
  - i. in the interests of the owner, lessee or occupier of the land crossed by the path, OR
  - ii. in the interests of the public.
14. I consider that a diversion between points A and B (options 4.1a or 4.1b) would be expedient in the interests of the landowner. It would remove the recorded definitive line from their garden. Given the uncertainty around the definitive line at Heathwaite this part of the diversion would mean a single, clear route being available to the public and signed / shown on mapping. This would be of some benefit both to the applicant and to the public due to the current recorded definitive line being unusable.
15. A diversion onto the track between F and G (option 4.1c) would be in the interest of the public but not the owner. The main benefit the applicant is seeking from a diversion is an improvement to their and their guests' privacy and this would reduce privacy – with the footpath passing around the buildings.
16. A diversion between points D and E (option 4.1a) would be expedient in the interests of the landowner. There is holiday accommodation available at the property and this part of the diversion would mean the public pass through less of the yard when using the footpath, improving privacy for the owners and their guests. The yard is also sometimes used for vehicle movements, including reversing between the buildings on the section between points G and E to load / unload. The proposed diversion would reduce the hazard / liability concerns introduced by footpath users and vehicles both using this confined space, and the owner states it would aid their agricultural efficiency.

## **CONSULTATIONS**

17. We undertook two rounds of consultation with our usual extensive list of consultees including statutory consultees (the parish council and unitary authority), the Local Access Forum, user groups and statutory undertakers.
18. The first consultation asked consultees to provide comments on a diversion from the definitive line to the applicant's proposed routes A-B and D-E, and mentioned the possibility that we could consider an application for a Modification Order if received, or user evidence were collated and sent to us. Our second consultation provided additional information regarding the uncertainty about the definitive line at the property (Annex 2). At this stage the applicant had also surfaced their proposed routes, with the view that consultees would find the finished paths more favourable. We therefore requested that consultees confirm their views on the applicant's

proposed routes and whether they would support or oppose a diversion of the footpath onto these.

19. We received the following responses. Some of the responses were quite long or initiated some discussion back and forth, I have attempted to summarise the final position of these consultees in the below table, and a more complete record of these discussions is provided in Annex 3.

<b>British Horse Society</b>
<p><b>Response to first consultation (22/10/2024)</b> – Of the view that higher rights may exist on the footpath. Requested that we ask the landowner if they would be willing to dedicate bridleway rights on the footpath to the south of the property. Recognise that the proposed diversion would benefit the landowner.</p> <p>--</p> <p><b>LDNPA Response</b> – <i>Confirmed that we would be keen to receive user evidence relating to the routes actually used at the property.</i></p> <p><i>The landowner confirmed that they did not intend to dedicate bridleway rights over the sections of the footpath through their property.</i></p>
<b>Cadent Gas</b>
<p><b>Responses 2/10/2024 and 15/1/2025</b> - Confirmed they had no gas apparatus in the immediate vicinity and had no objection.</p>
<b>Coniston Parish Council</b>
<p><b>Parish Council Response to second consultation (22/1/2025), further details of earlier discussion and consideration by the Parish Council are provided in Annex 3</b> – This matter was tabled for our meeting on the 20<sup>th</sup> January at which the Parish Council resolved to find that Routes A to B and D to E were acceptable as an alternative right of way through Heathwaite Farm.</p> <p>Members did ask that I restate our previously held position that the route from A to E entirely via the farmyard was the historically accepted route that had been honoured and used by both visitors and locals from many, many decades. I know that this route will be superseded when the new route is adopted, however, I was asked to convey this to you.</p> <p>They also asked me to convey their thanks for the thoroughness of your research which was done in a genuine attempt to divine the true right of way through the farm</p>

at Heathwaite. It was both of great interest and help to the Parish Council coming to the conclusion it did.

#### **Cumbria Bridleways Society / Local Access Forum**

**Response 8/11/2024** – Noted scarring from use on the slope between points A-B and that this could act as a drain given the steepness of the slope (visited before the surfacing works undertaken by owner).

State that the farming activity in the vicinity is only by the two tenants and do not recognise an agricultural need for use of the farmyards (between points G and E). View impact to users and tenant of existing footpath as minimal.

See no advantage of diversion to D-E to the user, substantial works would be required (visited before surfacing works) and highlight potential greater maintenance issues in future.

Suggest the route using the farm track (F-G) would seem sensible if heading north-south through the property, recognise that some people might use A-B if linking with the U-road.

Suggest a couple of local people who may be able to confirm their past use of the route on the farm track (F-G) and view this route as, 'the most obvious one and the most accessible for users and I would consider the proposed alternative (A-B) to only offer advantage to the landowners'.

#### **Electricity Northwest**

**Responses 16/10/2024 and 28/1/2025** – Provided a 'not affected' letter, no objection.

#### **Open Spaces Society (OSS)**

**Full details of the OSS' consultation responses and further discussions are provided in Annex 3. The key points they wished the Committee Members to take into consideration are neatly summarised in their email dated 14/3/25 as:** The OSS have now given this proposed diversion some additional thoughts and, like the parish council and the BHS, is disappointed that no material evidence for higher use rights and the traditional use of the track through the former farmyard was forthcoming.

The OSS recognise that the starting points, the length of the proposed diversion, and the interests of the landowner meet the criteria to be weighed when a diversion order is being considered.

The matters which the OSS wish your committee to consider are those affecting the amenity of users. These fall under several considerations in respect of the proposed A to B line. They are:

a) the OSS agrees that the proposed line is easier to walk than the apparently wrongly mapped route A-C. However, the steepness of the route and the nature of the surface are not pleasant to walk on especially to more elderly people both in ascent and descent.

b) the surfacing of the path which has undertaken, whilst partly helpful, is of a material and of a slope gradient which is not sustainable in the longer term due to the potential for heavy rain wash out. Whilst your colleague's appraisal as to the surface may be correct in the short term we would ask the committee to request that the path proposed take a more zig-zag route between A - B and be surfaced with appropriate natural materials to the full proposed width of the diversion.

With respect to the proposed diversion, we recognise the benefits of the route D - C however, the committee is asked to consider if the fine bank barn which is passed on the current route will be as clearly visible from the new route and whether or not they consider this a material loss of amenity for path users. Whilst we are unhappy with the nature of the surfacing materials used between D - E we think the spreading of some soil over the rock material should be insisted upon should the Committee agree the proposed D - E route.

#### **United Utilities**

Responses 3/10/2024 and 27/1/2025 – No known assets in the vicinity, no objection.

#### **Westmorland and Furness Council Countryside Access Team**

Responses 4/10/2024 and 14/1/2025- No objection or comments on the proposals.

#### **Westmorland and Furness Councillor**

Response 1/10/2024 – No issues raised with myself as a Councillor

### **DISCUSSION – AND TESTS TO APPLY**

#### **Tests to be Considered**

20. These are listed below, and I shall go through them one by one:

- Will the new route be substantially less convenient to the public?
- The effect which the diversion would have on public enjoyment of the path or way as a whole.

- The effect the order would have as respects other land served by the existing right of way.
- The effect of the new right of way on land over which the new path is created.
- That termination of the alternative footpath is on the same or a connected highway and is substantially as convenient to the public.

*Will the new path be substantially less convenient to the public?*

21. Planning Inspectorate Advice Note 9, commenting on the case of *Young* identifies that the new route should not be substantially less convenient to the public in terms of, for example, features which readily fall within the natural and ordinary meaning of the word 'convenient' such as the length of the diverted path, the difficulty of walking it, and its purpose.
22. As can be seen from the photographs / route descriptions either A-B or A-F-G is more convenient than A-F-C. Even if all manmade features were removed / re-graded between F-C, there would still be the obstacle of the near-vertical outcrops of bedrock at the top of the garden.

*Relative convenience of A-B and A-F-G (options 4.1a/b or option 4.1c)*

23. The OSS have indicated that their preference for a diversion of the footpath would be onto the farm track A-F-G (option 4.1c) and queried in their responses to the consultation whether the surfaced path A-B should be zig-zagged to reduce the gradient up the slope if we proceed with option 4.1a/b. A zig-zag could be created and would be more convenient for some users – but our Ranger and myself are of the view that the slope is not inordinately steep, particularly in the context of the likely walks in the area which will necessarily use other highways of a similar gradient (routes between Coniston and the Walna Scar Road, Coppermines Valley or Coniston Fells). We consider it likely that if the surfaced path were zig-zagged many users would choose to use a more direct route cutting the corners anyway, adding to the visual impact. This could be prevented with post-and-rail fencing – but this would add further to the visual clutter. In this context my view is that more users would be likely to prefer a slightly more direct route than a slightly lower gradient.
24. The OSS have also expressed the view that the surfaced width of the path should be widened and soil put down over this to improve it. Our Ranger has inspected the surface and confirmed that they consider this work to have been done to a good standard, and that if our Ranger team were tasked with creating a path here as a 'blank canvas', it is unlikely they would have done anything differently. Experience shows that it will green up naturally over time. The recorded width being wider than the width surfaced with aggregate also means some grass surface is incorporated into the footpath. At some times this may be preferred by walkers, for example in icy conditions.

25. Although the farm track (option 4.1c) is the least direct of the options for this part of the diversion, it is also less steep and the difference in distances between routes is relatively nugatory in the context of walks in the area. Looking solely at convenience to the public A-F-G would in my view be the best of the options for users heading to or from the south using the continuation of the footpath due to the ease of the surface and slightly lower gradients.
26. A diversion solely to F-G would remove any connection to the U5013 road substantially impacting on convenience and the amenity of the footpath, and the network as a whole. So, if we did proceed with a diversion to F-G, we would also need to leave a connection G-D-C to retain a junction with the U-road. For those wanting to use the U5013 this route would be less convenient (despite the gentler slope) due to its significantly longer distance – approximately 103 metres between A-F-G-D-C-B, as opposed to 57 metres following the applicant's proposed route A-B.
27. The farm track is occasionally used by vehicles and visibility is not ideal with the curve of the track and narrow section between the buildings. However, vehicles are only likely to be moving at slow speeds and it does not appear particularly hazardous.

*Comparison of convenience of D-G-E and D-E (options 4.1a or 4.1b)*

28. The length is similar, DGE being 68 metres and D-E, 62 metres. The applicant has surfaced the route through the previously boggy field, and our Ranger is satisfied that this work is sustainable and should mean that the new path remains easy to use with relatively low maintenance, without developing a boggy surface again.
29. Given the gentle gradients, similar lengths (the proposed route being very slightly shorter), similar furniture (effectively one wicket gate on each) and easy to use surfaces on both routes (with the current route perhaps being slightly more convenient due to its width and not within a field), I do not consider the proposed route D-E to be substantially less convenient than the existing definitive line D-G-E.
30. An exception to this would be if an order diverting the footpath onto the farm track were also made (option 4.1c). This would not only be somewhat longer (approximately 134 metres for F-G-D-E compared with 105 metres for F-G-E), but in my view would feel a very circuitous, illogical route through the property. In my view if a diversion of the footpath between points F and G were made, then a diversion of this section to D-E would be substantially less convenient.

*The effect the diversion would have on public enjoyment of the path or way as a whole*

31. The proposed diversion route between points A and B (options 4.1a or 4.1b) offers excellent open views over Coniston Water and the surrounding countryside. Closer at hand are the large oak trees and beck running alongside the path. The recorded definitive line would be unenjoyable for most due to the inaccessible features (wall and exposed bedrock) which would frustrate anyone attempting to follow this. As might be expected the section within the garden itself is pleasant, and there are still views over Coniston Water (though obstructed by the trees in places).
32. Option 4.1c via the track (points F-G) has fewer open views but does offer greater opportunity to enjoy the features of the attractive stone farm buildings. Some users may feel some sense of this being a 'private' or domestic space, though clear waymarking could provide reassurance of the right to walk there.
33. The proposed route D-E (option 4.1a) again offers more open views of Coniston Water and the countryside whereas the existing definitive line between D-G-E (option 4.1b or 4.1d) offers more intimate views of the buildings constructed with vernacular stonework. The proposed route D-E has been fenced off from the field with barbed wire – this, whilst understandable from a land management point of view, does provoke a feeling of being hemmed in. The Open Spaces Society noted in their consultation responses the views of the bank barn being diminished on the D-E proposed route when compared with the current route D-G-E.
34. The existing routes and option 4.1c along the farm track probably offer a bit more variety to the user in that walks in the area are already likely to provide open views over the lake and surrounding countryside at various points, whereas the opportunity to feel you are walking through an attractive property is perhaps less frequent (though other buildings constructed in this style can be seen in the area, for example in the village of Coniston). Overall, the situation here is largely subjective, users who prefer wider landscape views are likely to gain greater enjoyment from A-B and D-E (options 4.1a/b), users who prefer the built environment are likely to favour F-G (option 4.1c) and G-E (option 4.1b). All routes here are enjoyable and I do not think that the selection of any one route would present an irreconcilable loss when compared with the other options.

*Would the order affect other land served by the existing right of way?*

35. I have not identified any significant effect of any of the proposals on other land served by the existing right of way. All the routes under consideration are over land owned by the applicant. Whichever option is selected, it is unlikely to affect the number or type of users and consequently will have little or no impact on the surrounding land or highway network. No other public or private rights will be affected.

*Is there any effect of the new right of way on land over which it is created?*

36. There would be little effect of the new right of way on the land over which the proposed diversion routes pass. The applicant had already signed and made available to the public the A-B section. They have also already surfaced their proposed routes. Although these sections are within fields and so the right of way passing through them may slightly limit the agricultural options this would appear to be of limited impact – A-B is a grassy field, the path already exists and occupies only a very small fraction of the overall field. D-E is within a wet field with rushy vegetation.
37. Diverting the footpath over the section of the track between points F and G (option 4.1c) would have a greater effect on the owner's interest in the land. The track is used by the owner and guests staying at the holiday accommodation – those using vehicles on the track would need to be aware (or made aware) that this was shared with a public footpath. The route from F-G (and retaining G-E) would mean the footpath is in closer proximity to the buildings. This may reduce the feeling of privacy for the owner and their guests – ultimately impacting the owner's interest in the land.

*Is the termination of the alternative footpath on the same or a connected highway, and is it as substantially as convenient to the public?*

38. The footpath has a junction with the U5013 road at point C, the entrance to Heathwaite (on the Lancashire definitive map the current footpath was recorded as two separate footpaths). A diversion of the footpath to one or both of the proposed routes between A-B and D-E (options 4.1a or 4.1b) would be substantially as convenient, providing slightly more direct connections between the footpath (in either direction) and the U5013, compared with the recorded definitive line. A very short discontinuity (approximately 9 metres) within the footpath would be created between points B and C (part of the U5013). If diverting to F-G we would need to retain a link (G-D-C) to avoid losing a junction / termination point on the U-road.

<b>OTHER CONSIDERATIONS REQUIRED BY LEGISLATION AND DEFRA GUIDANCE</b>
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*Rights of Way Improvement Plan*

39. Before confirming a public path diversion order we are required to have regard to any material provision of a Rights of Way Improvement Plan (RoWIP). No RoWIP formally exists now for Westmorland & Furness, so we are effectively considering our own 'Out There' Access & Recreation Strategy to be the LDNPA's RoW improvement plan:

[https://www.lakedistrict.gov.uk/\\_data/assets/pdf\\_file/0023/59270/Out-there-Access-and-Recreation-Strategy-2023-final.pdf](https://www.lakedistrict.gov.uk/_data/assets/pdf_file/0023/59270/Out-there-Access-and-Recreation-Strategy-2023-final.pdf).

40. The primary focus of the Access & Recreation Strategy is not on specific route proposals. This proposal would meet the general aims within the Strategy, most specifically the 'Manage and maintain' priority theme. In managing and maintaining access we have goals that we will increase the overall ease of use of rights of way and keep the definitive map up to date. This footpath would currently fail an ease-of-use survey due to the recorded definitive line route being unusable. Any of the diversion options would pass.

#### *Limited mobility*

41. We have a duty to audit proposals with regard to limited mobility. The recorded definitive line between points F and C is effectively unusable for all users. The most accessible route possible at the property for the northern half of the proposals would be via the farm track (option 4.1c) as it provides the lowest gradient and easiest surfaces. The applicant's proposed route A-B (options 4.1a or 4.1b) does feature steeper gradients than F-G. The continuation of the footpath north of point A to the U5033 is along a track which now has an easy-to-use stone surface. However, beyond this to both the north and south the footpath has grassy, steeper and rougher surfaces. All the connecting highways (including the U-roads) feature significant gradients. It appears unlikely that users who would not be able to use A-B due to its gradients would choose or be able to follow routes which continued on the rest of this footpath – so its inclusion in a diversion order would be unlikely to stop anyone using this footpath who otherwise could if the footpath were diverted to the farm track (option 4.1c).
42. A diversion of the footpath from D-G-E to D-E would have little impact for users with limited mobility. The two routes have similar stony surfaces for the most part.

#### *Impact on the needs of agriculture and forestry*

43. Assessment of the impact on the needs of agriculture and forestry is required under Schedule 6 of the Countryside & Rights of Way Act 2000. There would be minimal impact of these diversions on agriculture and there would be no forestry impact (as none of the land is used for forestry). The proposed diversions may bring about a small benefit to agricultural efficiency – the small yard to the south of the main buildings between points G and E is used for storage of agricultural equipment and some loading / unloading from vehicles. Moving the footpath out of this area will allow the owner greater freedom / efficiency in the use of this space.

44. Diversions to A-B and D-E (option 4.1a or 4.1b) would result in the surfaced paths being unavailable for grazing or other agriculture (although the surfacing has already been undertaken so this is effectively already the case). The owner is of the view that the benefits to them from the footpath not passing between the buildings will outweigh the minor disbenefits of the newly surfaced paths over the land. The field corner D-E crosses is clearly quite wet at times, with reedy vegetation and likely to be of relatively low agricultural value.

*Landscape Impact, Biodiversity, Archaeological and Conservation Interests*

45. We must consider landscape impact, biodiversity and archaeological interests and have to conserve biodiversity under the Natural Environment and Rural Communities Act 2006. And under section 11 of the Countryside Act 1968 we must have regard to the conservation of flora, fauna, and geological and physiographical features and the amenity of the countryside.
46. In terms of landscape impact resulting from these diversions – there is some visual impact of the surfacing of the paths (already undertaken), though I do think this is balanced by the need to provide a sustainable, easy to use surface to make these viable options. In their consultation response the Open Spaces Society have raised the suggestion of the proposed route between A and B zigzagging up the slope to reduce the overall gradient. Notwithstanding the pros and cons of this in relation to convenience, my view is that this would cause a far greater visual impact and appear a lot less ‘natural’ than the route the applicant has created. The proposed routes A-B and D-E are quite close to boundaries, A-B is also slightly beneath the canopy of the adjacent trees so not too overt.
47. There are no recorded historic features or scheduled monuments affected by these proposals. No further excavation works would be required for any of the options under consideration so there appears to be no impact on archaeological interests resulting from a diversion here.
48. There would not appear to be a significant impact on biodiversity, conservation or geological / physiographical features as a result of any of the proposals. As discussed above, the applicant has added stone aggregate surfacing on their proposed routes, over what were grassy surfaces. Although vegetated these do not appear to have been of any unique natural value, more typical field surfaces for the area. The land does not have any specific designation as priority habitat, a Special Area of Conservation or similar. Providing clear surfaced routes will encourage users to follow these rather than spread out over a wider area of the land, potentially having a greater impact.
49. Some basic drain features have been added on the newly created surfaces; these will act to shed water off the path surface onto the adjacent land / watercourses

more rapidly – but in the context should not result in any great change to the inflow to watercourses or overall wetness of the land. They will only really act to prevent the new path surfaces becoming waterlogged or rapidly eroding.

*Impacts on the Lake District World Heritage Site's Outstanding Universal Values –*

50. The Lake District's Outstanding Universal Value is comprised of three interrelated themes:

- *Identity* – it is a landscape shaped by people
- *Inspiration* – that the landscape has in turn shaped us, how we look at and relate to landscapes
- *Conservation* – the Lake District is the birthplace of the global landscape conservation movement

51. No major impacts on the Lake District's Outstanding Universal Values have been identified. The World Heritage Site Coordinator has been consulted and raised no issues.

*DEFRA Presumptions Guidance*

52. DEFRA published a guidance note for order-making Authorities in August 2023 on diversion of Rights of Way which pass through private dwellings, their curtilages and gardens and farmyards. This is to some extent in opposition to a pre-existing LDNPA policy of a presumption in favour of preserving the historical integrity of the network. Following the publication of the DEFRA guidance we have taken the view that this takes precedence and overrides the LDNPA policy. Key points from the DEFRA guidance relating to this order include:

- *In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given.*
- *The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests.*

- *In determining an application to which this guidance applies, it is for the authority to consider the case on all its merits taking into account all the statutory requirements and available guidance. In making its decision as to whether the existing path should be diverted or extinguished, an authority should consider in particular the impact of the existing path on the property owner and/or occupier against the benefit that having the right of way through the land brings to the public, taking account of this guidance.*

53. I have attempted to give due consideration and weight to the benefits (including improved privacy) to the landowner which would result from their proposed diversion against the impact of the proposal on the public as a whole. This accords with the LDNPA policy of recognising the concerns of those managing the land where legitimate operations may affect the public's enjoyment of or safety in using rights of way. It should be noted that the legal tests for making and confirming a diversion under section 119 of the Highways Act remain unchanged and it is still these the proposed diversion has been assessed against. As the legislative tests have been satisfied in my view by the applicant's proposed routes for the diversion between A-B and D-E (option 4.1a), it follows that we should be predisposed to make and confirm a diversion order to move the footpath away from the domestic buildings at the property to improve privacy.

#### **ASSESSMENT REPORT SUMMARY**

54. The recorded definitive line of this footpath is not usable between points F-C, and it appears likely it never has been. Therefore, a diversion of the footpath onto either of the options under consideration for this section would in my view meet the tests for diversion and be in the interest of the public.
55. Of the options 4.1c would be most convenient for members of the public following just the footpath here (but less convenient than 4.1a/b for those whose route is between the U5013 and point A). Option 4.1c would not be the preference of the owner – they have sought to discourage use of this since they took on the property. A diversion to A-B (options 4.1a or 4.1b) would be in the interest of the owner and would also provide the public with a route which was more direct and adequately easy to use for the expected user in this context, being no more difficult than the connecting public rights of way and other highways in the area.
56. If we divert the footpath between points A-B, there are the options to alter the route shown on the plan by adding a zigzag to reduce the gradient (4.1d), to alter the surface top dressing or to widen the surfaced width of the path between A-B and / or D-E (option 4.1e). As detailed in paragraphs 23-24 this does not appear necessary in my view. Our Ranger has confirmed that the construction of these paths is satisfactory, and I do not consider the gradient to be too great, particularly in the context of paths and roads in the area. The recorded width of the footpaths will be

greater than the current surfaced width – we could widen the path in future if issues arose, though this appears unlikely to me.

57. Similarly, a diversion from D-G-E to D-E (option 4.1a) would be in the interest of the applicant whilst in my view satisfying all legislative tests for diversion.
58. Based on the guidance note issued by DEFRA that we should be predisposed to diverting rights of way from within farmyards and domestic curtilages in the interest of the owner's privacy where we are of the view that all other tests are satisfied, I therefore recommend option 4.1a – that we make a diversion order to bring these changes into effect.

## **ANNEX 1**

### **Our Policies on Changes to the Public Path Network**

Policies on changing the public path network have been developed and approved by the Authority. These are listed below.

- There will be a presumption in favour of preserving the historical integrity of the network.
- The concerns of those managing land, especially for agriculture and forestry, will be recognised where legitimate operations may affect the public's enjoyment of or safety in using a public right of way. Under schedule 6 of the Countryside & Rights of Way Act 2000, we also have to look at the impact of all changes on agriculture and forestry.
- There will be a presumption against re-alignment of cross-field paths onto routes following field edge boundaries.
- There will be a presumption against any reduction in the amount of public access in the National Park.
- Where the route in use at present differs from the definitive line, there will be a presumption in favour of restoring the original route before considering a legal diversion.
- The future maintenance and management implications of any proposed change to the network will be considered.
- Changes should, if possible enhance public benefit through enabling the better enjoyment of the cultural landscape and nature conservation interest and should not reduce the ability of the public to discover any of the special qualities / features of the National Park.

**ANNEX 2**

**Initial Evidence Gathering Regarding the Definitive Line of Footpath 512021 at  
Heathwaite, Coniston Parish**

Provided as separate document

## ANNEX 3

### Extended Consultation Responses and Discussion

#### British Horse Society

**Response to first consultation (22/10/2024)** - Firstly, whilst I have not had an opportunity to research the history of footpath 512021 I believe that there is the possibility that the entire length of the path could carry unrecorded higher rights and, as such, I am requesting that if the LDNPA decide to grant the footpath diversion then the legal diversion order also diverts any unrecorded higher rights.

Secondly, assuming that the request to divert the footpath has been made by the landowner, I also ask the LDNPA to approach the landowner to see if they would be willing to upgrade the section of footpath 512021 from point D south to bridleway 512011.

If this section of footpath were to be upgraded it would mean that horse riders and cyclists could access BW 512011 via the unclassified road U5013 101 (road from Coniston to Heathwaite) instead of having to use the A593 and Ship Inn public car park, which would obviously be far safer.

I understand that this request is not relevant to the legal test for the diversion of the footpath, however the BHS see an opportunity to upgrade this short section of footpath to bridleway which would benefit the public, as the proposed footpath diversion will benefit the landowner.

**LDNPA Response** – *Confirmed that we would be keen to receive user evidence relating to the routes actually used at the property. We don't think we could explicitly state that we were diverting unrecorded higher rights, as by diverting them we would be recording them.*

*The landowner confirmed that they did not intend to dedicate bridleway rights over the sections of the footpath through their property.*

#### Coniston Parish Council

The Parish Council initially indicated in their response to the first consultation (23 October 2024) following a meeting that they would intend to object to the proposed alteration. They also stated that they were,

'interested in overturning the inaccurate Cumbria CC (*Definitive*) map that has caused the confusion and return to the accurate Lancashire (*provisional first review*) map that detailed local understanding/use of the right of way at Heathwaite. There are very many people, including three councillors, who can attest that the right to walk through the farmyard from the track and through it onto the path that leads to Bowmanstead, was free and unrestricted access for far longer than the 20-year period you mentioned. Can you give me further instruction as to what information they must provide, what format this should take, how many persons you would want me to include etc.'

**LDNPA response 29/10/2024** following a further phone call with the Clerk to the Parish Council and applicant –

*I explained (to the applicant) the situation as it stands – that the Parish Council and local residents believe they will be able to provide clear evidence that a different route had been in use prior to him taking on the property.*

*I clarified that if / when such evidence is received, we would then need to consider comparing his proposed route down the grassy slope (A-B) with the 'evidenced' route(s), rather than the route currently recorded as the legal line of the footpath (A-F-C).*

*He acknowledged this and confirmed that he would still be interested in a diversion to A-B. I think he discussed this with you, but he was keen to highlight that he would be very willing to undertake surfacing works on both the proposed sections A-B and D-E shown by dashed lines on the plan. He mentioned that he would anticipate doing this to the same standard as the other tracks through the farm (with stone chippings / aggregate, and drainage where necessary). During our discussion he asked whether it may be worthwhile him undertaking these works now, so that those considering the proposal could base their comments on the 'finished product', so to speak. I did highlight that doing so could not guarantee the success of the diversion, but that if he wished to proceed with doing so there is no reason why not (subject to planning permission if required).*

*So, the next step will be for the Parish Council or local residents who can provide such evidence to collate as much as possible regarding the route(s) actually in use through the property and provide this to us. Our guidance and application pack for Modification Orders (DMMOs) are available on our website. As for now we are chiefly concerned with which route the proposed diversion should be compared with when considering the legislative tests for diversion (under Section 119 of the Highways Act 1980) I would suggest that for now we just need as many User Evidence forms (Form E) to be completed as possible, and that the other stages to a Modification Order application (serving notice on the landowner, application form and so on) can wait for now. I've also attached a second map (PDF, ending with Highways) just showing the current legally recorded public highways – as this may be useful for those providing evidence to mark on the route(s) they've used.*

*Those submitting evidence should provide as much information as they can, being very specific about the route they have used 'as of right' through the farm and when they have used it. For a Modification based on user evidence – a period of 20 years' continuous use by the public (doesn't need to be 20 years use by any one individual or individuals, but the overall evidence must show on the balance of probabilities that the route was in use by the public for 20 years), this will need to be demonstrated to be use without force, challenge, secrecy or permission. If the 20 years' use ceased when the current landowner took on the property (2022) then the evidence could be for the 20 years prior (2002-2022) – the key thing is that there was a 20-year period of use as of right at some point. If more than one route through the farm has been used, individuals should fill out separate evidence forms for each route they have used. It is stated within the form, but worth highlighting, that information provided in the form **cannot be treated as confidential**, and may be discussed via subsequent written representations, a public hearing, or a public inquiry (and it may in due course assist the weight given to their evidence if users are willing to attend a public inquiry and be questioned on their evidence).*

*I understand following our discussion that you will want to discuss this further with your Parish Council colleagues, and those who have indicated they would be willing to provide evidence and may ask someone else to lead with coordinating this. If possible to let me know who will be doing so in due course, that would be very much appreciated. It would also be helpful if they could advise as soon as possible when they anticipate being able to send us their collated evidence (of course, the sooner the better from our perspective).*

*In the meantime, we will be undertaking some further investigation to see if we can find any documentary evidence relating to the different routes shown on the Lancashire and Cumbria Definitive Maps which may also shed light on whether this right of way was recorded incorrectly on the Cumbria Definitive Map (or Lancashire Map, or both!).*

*If / when such evidence has been collated and presuming that it showed on the balance of probabilities that the footpath is recorded incorrectly on the definitive map, then we could proceed with consulting on a diversion comparing the proposed route A-B to the evidenced route(s) and make a decision as to whether the legislative (s119) tests were satisfied. If so, we could proceed with making the diversion (there would of course, be the right to object on the basis that the s119 tests had not been satisfied). If we (or the Secretary of State / Planning Inspectorate – if the order were objected to) decided that the diversion did not meet the s119 tests, then we would need to consider making a Modification Order and a full application could be considered.*

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**The Parish Council provided an update 26/11/2024 –**

Coniston Parish Council met to discuss the proposed diversion. Elected Members had visited the site to inspect the existing right of way and the proposed diversion. There was considerable discussion at the meeting, but it was resolved to support the proposed diversion.

**Parish Council Response to second consultation (22/1/2025) –**

This matter was tabled for our meeting on the 20<sup>th</sup> January at which the Parish Council resolved to find that Routes A to B and D to E were acceptable as an alternative right of way through Heathwaite Farm.

Members did ask that I restate our previously held position that the route from A to E entirely via the farmyard was the historically accepted route that had been honoured and used by both visitors and locals from many, many decades. I know that this route will be superseded when the new route is adopted, however, I was asked to convey this to you.

They also asked me to convey their thanks for the thoroughness of your research which was done in a genuine attempt to divine the true right of way through the farm at Heathwaite. It was both of great interest and help to the Parish Council coming to the conclusion it did.

**Cumbria Bridleways Society / Local Access Forum**

**Response 8/11/2024** (*Consultee visited with a former Parish Councillor for Coniston*) -

The owner introduced himself just after we had started along the footpath, having parked on the new access track (I did leave a note), by the time we arrived at the property he was waiting for us and accompanied us for much of our time.

We looked at the unofficial diversion first. I see there is already scarring from use which will now act as a drain given the steepness of the slope. It is difficult to see how you would mitigate this. You sent with the papers an early 1960's picture that you had used to try and determine whether there was a wall at the Southern boundary of the fenced area adjacent to the house, which contains the definitive line (Cumbria map). I note that there is no indication of a route where the unofficial line now goes. Which you could perhaps expect if the definitive route has always been blocked.

The signage for the unofficial route appears to be the owners. He said it was needed in the pandemic when the usage increased dramatically. We met no-one on the route.

I note there is an exit gate to the front of the property from the garden but not on the definitive line. The owner says that he put the steps and gate in.

The owner pointed out the width of the route to the "working" yard between the buildings and pointed out the inconvenience of people using the path when farming activities were taking place. This is not a working farm. All the "farming activity" is from the two tenants. At the Walna Scar Road end a local builder rents some of the land for ponies, sheep and pigs. With the new widened access and parking area (I'm not sure this is part of the permissions) he has no need to use the farmyards. Closer to the farm a second tenant runs sheep and cattle. Most of the ground appears to be planted and believe there is another scheme for further planting, reducing area for cattle as the trees are still at the tree guard stage. There was no stock visible the day we visited. In the "working" yard the sheep pens are away from the line of the path and there was no sign of cattle management equipment. I think the impact to users and the tenant of the existing footpath is minimal.

The new area marked as a diversion to the path would clearly require substantial works to create a path given the wet nature of the field. I see no advantage to the user from the diversion. And a potentially greater maintenance issue for the NPA.

I asked the owner about an upgrade to bridleway. He wasn't in agreement.

The difference in the two definitive maps is an interesting one. I'm not sure how you decide which is correct. I can only make the following observations.

It was ten years between the two maps. In that time the ownership of the farm changed. Initially Rydal Estates owned the property (at the time of the Lancashire (*Provisional First Review*) Def Map route). Mr Park I believe purchased the farm early 1970's. Rydal Estates might have records about ROW?

Of the two path options the Lancashire (*Provisional First Review*) route would seem a sensible one if heading to the BW from the Walna Scar Road or the other way.

If you were using the UCR to/from the footpath, particularly, North to South, I'm sure some people might well take a shortcut up the unofficial path.

There could actually have been two routes with mistakes on both maps.

The wish to send people down the unofficial diversion appears to be one the current owner has managed through signage. His suggestion to add the new piece of path only confirms his wish to exclude people from using the Lancashire (*Provisional First Review*) route. The owner made reference to the OS map as the one his solicitor and he, used to determine the footpath line.

This brings us to whether the Lancashire (*Provisional First Review*) Definitive Map was incorrect. On the way back to the car we spoke with the *tenant (local builder)* and his mother who gave us a possible timeline for ownership of the farm. The former Parish Councillor went onto speak with previous occupiers of the farm and he will be able to give you a list of owners/occupiers. No-one recalls the path being diverted from the Lancashire (*Provisional First Review*) line.

I have since spoken to *the Chair of the Fell Pony Heritage Trust*, who lived at Heathwaite when I first came to Torver in the late 1990's. She believes there was one footpath, and it went through the farmyards as per the Lancashire (*Provisional First Review*) Def. map. She is happy for you to contact her.

The "Lancashire" (*Provisional First Review*) route would seem the obvious one and the most accessible for users and I would consider the proposed alternative to only offer advantage to the landowners.

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**LDNPA Response** - *Confirmed that it was likely we would be undertaking the 2<sup>nd</sup> consultation and that at the time we were expecting to receive additional evidence in support of a DMMO from the Parish Council.*

### **Open Spaces Society**

**Response to first consultation 3/11/2024** – Thanks you for consulting the OSS regarding these possible diversions of fp512021. We managed to re-walk the paths, as best we could, today Sunday between the mayhem of half-term and Coniston Water records week.

I have previously walked almost all routes in this area - mostly in the mid-1950s and early 1960s. However, I doubt if my evidence from that time would stand scrutiny in an Inquiry.

As in previous times today we walked along 512021 from its northern junction with the Walna Scar Road. I do recall, at least part of that route being, grassy amongst hedgerows. In those days I would then, from point A, have walked directly into the farmyard on the 'track' before continuing south through the then farmyard to point E and onwards. In those days this was a mixed farm which produced milk and had a couple of rooms for B&B. The industrial style road is obviously new and did not then exist to this scale of construction. Can we assume this track has appropriate permissions for the road works?

Today we walked south from A to B along the proposed path route. This was steep and perhaps not to the width you would require. For us oldies we found the gradient unacceptably steep - more so than the track down into the yard of this holiday complex.

We noted that the owner had now constructed a path from D to E which again may not be of the required width. We walked the current definitive route which was clear and still bore some way markings. We saw no sign of farming operations, only some machinery which was possible for grounds maintenance. The newer concrete construction south-western building (an eyesore) we assume has appropriate planning consent?

We note you are undertaking further investigations. Can we suggest, if you have not already done so, to look at the earlier editions of the large scale O.S. maps for this area. This may give a clearer indication of the route from point A to the yard and which otherwise, I think, appears contradictory on the Lancashire and Cumbria definitive maps.

From memory of previous use, I was surprised that the northern section of this path, until it meets U5013, was not claimed as a bridlepath. Is there any research or information in respect of the path status?

At this stage the nature of the diversions, especially A to B, is causing us concern but can we please reserve a final judgement until you have all the available historic information including evidence from local users?

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**LDNPA Response 25/11/2024** - *Confirmed that at the time we were potentially expecting to receive a DMMO application via the Parish Council. Also confirmed that there had been no suggestion within the parish survey cards, maps or other definitive map associated paperwork to suggest this footpath was ever claimed as a bridleway. Detailed that we were expecting to undertake a further round of consultation regarding the proposals.*

**OSS Response to second consultation 15/1/2025 –**

1. The OSS agree that the current footpath line on the definitive map between points A and C is erroneously recorded.

2. From my memory regarding use of this path from the mid-1950s to the mid-1960s is the route of 512021 ran from the Walna Scar Road down to Heathwaite Farm, through the then farmyard and to meet with U5013. This was partly a pleasant, enclosed lane and field path which, in all probability was used as a bridleway. However, we have to say we do not think this memory would form robust material evidence of such use. This however accords accurately with the Lancashire (*Provisional First Review*) definitive map statement of their path 48.

3. Can we assume that the nature of the track relatively recently altered to a major wide, hard surfaced track north of point A used by 512021 required planning permission?

4. In respect of the proposed route A to B we are concerned about the steepness of the slope, in descent, and that the current works show both a significantly narrow path where it is of reduced width through the use of stone; it uses stone of a platelet nature (slate) which tends to slide when the weight of a person is applied on this down slope; and we suspect will be susceptible to wash out where the field is at its steepest.

5. We are somewhat ambivalent about a diversion between your points D and E. The yard appears no longer to be in agricultural use and the surface is robust. The amenity for path users is not of highest value although there is a fine bank barn to be appreciated and views of which will be denied to path users should your proposed changes go ahead. The proposed new route appears to have been constructed of a too narrow nature and the full width of a new path may have, from memory, some wet points. We would require assurances that the full width of the new path will be of a sustainable walkable surface.

In conclusion:

- a) The OSS is not supportive of the suggestion to move the path from A - C to A - B and would request that the understood original route through the yard be the line of the potential diversion.
- b) You consider further whether or not there is sufficient evidence for the route of 512021 from the western end of U5013 to the Walna Scar Road to be of bridleway status.
- c) You should only proceed with a diversion from points D to E should the full width of path be made sustainably usable.

**LDNPA Response 24/1/2025 –**

*I'm afraid with regard to whether the surfacing work north of point A required planning permission I could only refer you to our Planning team.*

*I note your concerns about the steepness of the slope and width of the surfacing between points A and B and shall take these factors into account. It's a funny case in that us comparing A-B to A-C and saying it's more convenient would not really be helpful given that I think all parties agree the recording of A-C is an error. But likewise, although there certainly does appear to have been public use of the track through the farm - we have not yet received sufficient user evidence or a DMMO application to suggest that our presumption should be that the farmyard track should be treated as the current definitive line of this footpath (and therefore the convenience of A-B compared with this). Based on the documentary evidence alone it's very difficult to come to any confident conclusion, but my own view would be that a route approximates to A-B (or at least east of the beck) would appear to have the strongest current evidence for being our presumptive definitive line based on the definitive mapping history. So, I think what we're wanting to establish currently is whether, if we proceed with a diversion to A-B, this is considered an acceptable option. I note your point that the OSS is not supportive of this, I'd therefore very much appreciate your confirmation as to whether the OSS would intend to object to such a diversion (and which s119 test(s) are not met in your view if so). If this is the case my report on this proposal would be submitted to our ROW Committee for their consideration and decision as to whether to make an Order.*

*On my site visit with our Ranger in December we measured the current width of the surfacing A-B to be 1.25 metres and 1.15 metres on the newly surfaced D-E section. At the time they felt that these were appropriate for the expected use of this path, and they believed that the cross drains installed by the landowner should be sufficient to prevent excess washout or wetting of the surface. I will have some further discussion with the Ranger as to whether it would be preferable for the surfaced width to be made wider or any other works we may require of the landowner to ensure its sustainability before accepting this as a highway (and it becoming our responsibility to maintain it to an easy-to-use standard).*

*It's likely that the legal width of the footpath would be wider than the made-up part of the surface - i.e. the definitive statement would be for a footpath with a width of perhaps 2 metres, with a made-up surface of 1.25m. Worth noting cases here such as Alan Kind vs Newcastle Council, 2001 where the view was taken that in order for the highway to be 'in repair' the full width need not necessarily be a made-up surface, so part of the footpath could be kept as grassy surface and part with aggregate. Having a variety of surface within the highway can be a useful feature at times - I certainly tend to take to the grass verges when it's icy and the alternative is stone pitching!*

*I will also take note in my report of your points regarding the impact on views of a diversion between points D and E.*

*I'm afraid I've found no evidence of use of this ROW as a bridleway as yet and no mention of the prospect of it being one amongst the documentary records. Neither have I received any evidence of use by equestrians or cyclists. Of course, if such evidence were received we would consider whether a DMMO were required, or a Creation Order should be made to record this as a Bridleway.*

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**OSS response 14/3/25 (with LDNPA comments in red) –**

The OSS have now given this proposed diversion some additional thoughts and, like the parish council and the BHS, is disappointed that no material evidence for higher use rights and the traditional use of the track through the former farmyard was forthcoming.

*If any evidence or a DMMO application is submitted to us – we will investigate this.*

The OSS recognise that the starting points, the length of the proposed diversion, and the interests of the landowner meet the criteria to be weighed when a diversion order is being considered.

The matters which the OSS wish your committee to consider are those affecting the amenity of users. These fall under several considerations in respect of the proposed A to B line. They are:

- a) the OSS agrees that the proposed line is easier to walk than the apparently wrongly mapped route A-C. However, the steepness of the route and the nature of the surface are not pleasant to walk on especially to more elderly people both in ascent and descent.
- b) the surfacing of the path which has undertaken, whilst partly helpful, is of a material and of a slope gradient which is not sustainable in the longer term due to the potential for heavy rain wash out. Whilst your colleague's appraisal as to the surface may be correct in the short term we would ask the committee to request that the path proposed take a more zig-zag route between A - B and be surfaced with appropriate natural materials to the full proposed width of the diversion.

*Noting a) and b) together - the convenience of the proposed route does warrant consideration, and it is difficult in this case as the construction of s119 is that we should be comparing the proposed route to that of the definitive line (which in this case is somewhat indeterminate). We must also have regard to the Equality Act in undertaking our work as well however, and therefore we should consider any reasonable adjustments within the specific context which could be made to improve the proposed route. Your suggestion of a zig-zag could help address the steepness of the slope so we can seek the Committee's views/decision on this – if we did add a zig-zag we'd want to achieve the right balance of reducing the gradient whilst not having it meandering so much as to become less convenient - in which case users may vote with their feet, cut the corners and it may become eroded. We can also seek the Committee Members' views on whether the width of the current surface is adequate, or whether we should require a wider surfaced section and / or recorded path width. Given the expected level of usage of this path the Ranger and myself felt that the width that had been surfaced was appropriate for the context (along with a slightly wider recorded width which means it would be fine for users to use the adjacent grass). But the Committee may concur with your view that a wider surfaced path would be better – and if so this could be required from the landowner before confirming the Order.*

With respect to the proposed diversion, we recognise the benefits of the route D - C however, the committee is asked to consider if the fine bank barn which is passed on the current route will be as clearly visible from the new route and whether or not they consider this a material loss of amenity for path users. Whilst we are unhappy with the nature of the surfacing materials used between D - E we think the spreading of some soil over the rock material should be insisted upon should the Committee agree the proposed D - E route.

*The views, including of the bank barn, and impact on amenity will need to be taken into account – so I will highlight this point in the report for the Committee's consideration. I may seek some advice from the Ranger about adding soil here – along with adding this suggestion to the report. My concern with adding soil would be it may either just become muddy, or depending on the vegetation which develops / gets planted, could eventually cause the path to become boggy if it holds water where users are walking.*

**LDNPA Response 25/3/2025** – *Provided comments highlighted in red above.*

*Confirmed we would look to submit this case to our ROW Committee, and if possible arrange a site visit beforehand.*

**OSS Response – 25/3/2025** –

There is just one point I would wish to challenge - as the current surfaces have been stoned they would act as a drain should there be added soil. Should also encourage grass to make the stoned path less intrusive.

Not sure about speaking but do keep me informed please and I have a niggle about the new path line being compared with the existing definitive line which was obviously wrongly mapped.