The Openness of Local Government Bodies Regulations 2014

These require that officers keep and publish a written record of decisions which are made, either:

a) under a specific express authorisation or
b) under general delegated authority, where the effect of the decision is to
   i) grant permission or licence;
   ii) affect the rights of an individual; or
   iii) award a contract or incur expenditure which, in either case , materially affects the Authority's financial position (£50,000 or over).

Subject of Decision: Diversion of Footpath 305011, Askham Hall Farm, Askham Parish

Relevant section of Scheme of Delegation

PART 4 - DELEGATION OF FUNCTIONS TO OFFICERS - ANNEX 3 - Functions delegated to Head of Rangers and sub-delegated to Ranger Team Leaders. **Rights of Way and Access Matters -** All functions of the Authority under the Highway Acts (whether acting pursuant to its own functions or in pursuance of functions delegated to it by Westmorland and Furness Council) except for the making and confirmation of Definitive Map Modification Orders (Wildlife and Countryside Act 1981) and the decision to refer to the Planning Inspectorate of the confirmation of any orders under the Highway Acts where formal substantive representations have been made. "Substantive representations" are those which explain adequately the nature of the concerns and meet the legal considerations defined by the Highways Acts and the Planning Acts.

Background

The definitive line of footpath 305011 has been unusable for at least 25 years, if it were ever actually usable. We have investigated its history and there does not appear to be enough evidence for a modification order. We have agreed a diversionary route with the landowner.

Details of Decision

To divert footpath 305011 from it's current route A-B to C-D, as shown on map within authorisation report.

Details of alternative options considered and rejected

Making no order at all, making a modification order, or processing via concurrent creation & extinguishment orders.

Where a decision is made under an express authorisation, names of any Member(s) who have declared a conflict of interest

None

Lead Director	Steve Ratcliffe, Director of Sustainable Development
Author and contact details of report	Nick Thorne, Senior Rights of Way Officer
Background Papers	Case file 1412.305.01
Date of Report	1 April 2026
Authorising officer	Ranger Team Leader
Date	15 April 2026

Diversion of Footpath 305011, Askham Hall Farm, Askham Parish

Summary

1. This report recommends the diversion of footpath 305011 at Askham Hall Farm in the centre of Askham. The proposal is supported by the owner and consultees.

Recommendations:

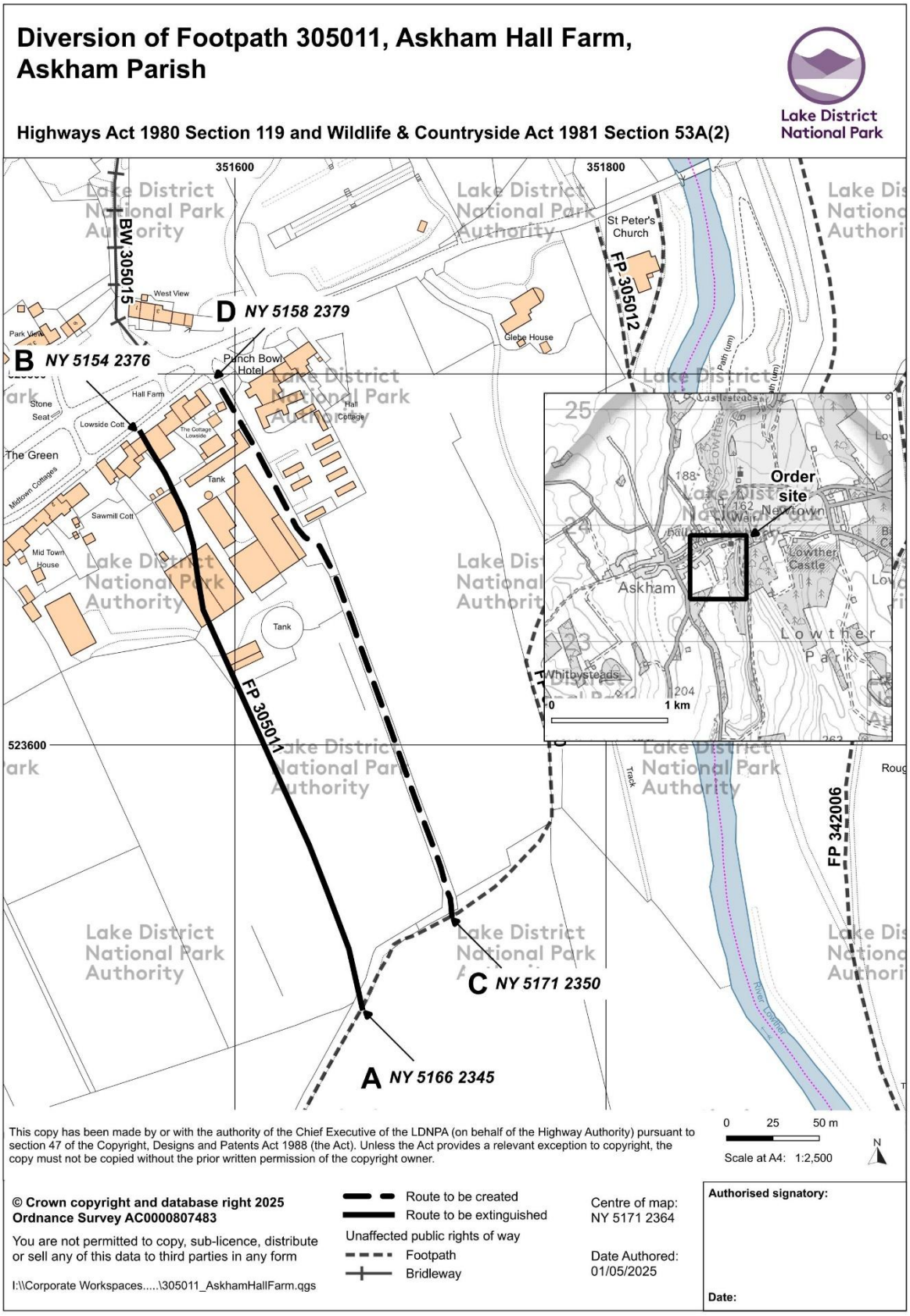
a we make a diversion order to divert footpath 305011 from A-B to a new route C-D as shown on the plan overleaf;

b we confirm the order if no sustained objections are received, or take the matter to our Rights of Way Committee if objections are made and sustained.

Background

2. The definitive line of footpath 305011 has been unusable for at least 25 years, if it were ever actually usable. We have investigated its history and there does not appear to be enough evidence for a modification order. We have agreed a diversionary route with the landowner.

Plan showing proposal



Policy context

Links to Vision and Management Plan

3. 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.

4. The Management 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

Links to Business Plan

5. Our Business Plan 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).

Links to other strategic plans

6. The Strategy & Rangers 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.

7. 'Out There' our Access and Recreation Strategy (approved March 2023) contains our vision for countryside access and recreation in the Lake District,

which is: *A well connected network fit for purpose in the 21st Century with high quality infrastructure, facilities and services meeting the needs of all visitors and residents.* We have identified four priority themes of work, and under each of these are a series of strategic actions that will contribute to the achievement of our goal and our strategic aims. The four priority themes are:

- Improve: rights of way and countryside access.
- Manage and maintain: rights of way, countryside access and recreational activities.
- Promote and engage: connect more people to nature and the special qualities of the Lake District.
- Integrate: with health and wellbeing, sustainable transport and economy.

8. This proposal helps fulfil the first aim by improving the ability for walkers to use this right of way with confidence and safety – and removes confusion.

9. Our charging policy was agreed at Authority in August 2006, and the actual charges updated regularly since then.

10. Factors to take into account when determining changes to the network were agreed at Park Management Committee in May 1997 ("Changing the Rights of Way Network: Statement of Policy"), and are listed at Annex 1.

Options

11. The following options are possible:
    a) make the recommended order
    b) do not make order and open the definitive line

Proposals

12. I recommend option a - for the reasoning set out in the discussion section below. It will make the path fully usable without walkers worrying that they are not in the right place, and it will also avoid the yard area to a great degree. Trying to open up the definitive line would seem to be an unfair imposition on the landowner.

Grounds and Tests for Diversion

13. 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 ignore 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.

14. 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:

    a. in the interests of the owner, lessee or occupier of the land crossed by the path; OR

    b. in the interests of the public

15. I consider that it is expedient in the interests of both the landowner, as it will remove the definitive line from going through the farmhouse, and the public - for the reasons discussed in this report.

What is proposed?

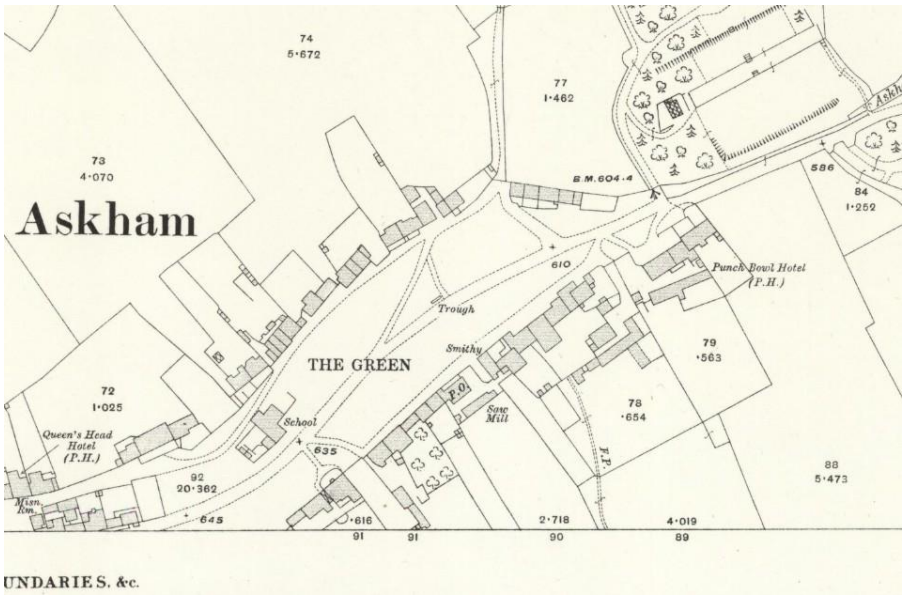
16. We have been aware for many years (25 at least) that there has been an issue with public footpath 305011 where it meets the road at Askham Hall Farm. The definitive map shows the route as heading northwards from another footpath, through the farmyard and then through the farmhouse itself.

1976 (current) Cumbria Definitive Map of Public Rights of Way

17. Having looked at as many map records as possible, I am not convinced that there was ever actually a footpath through the house – but the evidence is probably not strong enough to show where exactly it did run. The situation also appears to have been fairly organic and ongoing – with the legal line always seemingly unusable through the farmhouse building but generally with a way through to the road by wiggling through the yard on various routes, which changed over time depending upon where buildings were being developed or built.

1898 Ordnance Survey Map

18. Ordnance Survey showed paths through unsurfaced land – they didn't tend to show a path where things like farmyards and so on were surfaced as they were showing physical features rather than rights. The physical path as shown on the map enters the yard from the south – then heads due north to reach the back of the roadside buildings. There must have been a way through to the road, and logic would say that this was to the east, along the main access drive (or through an open barn).



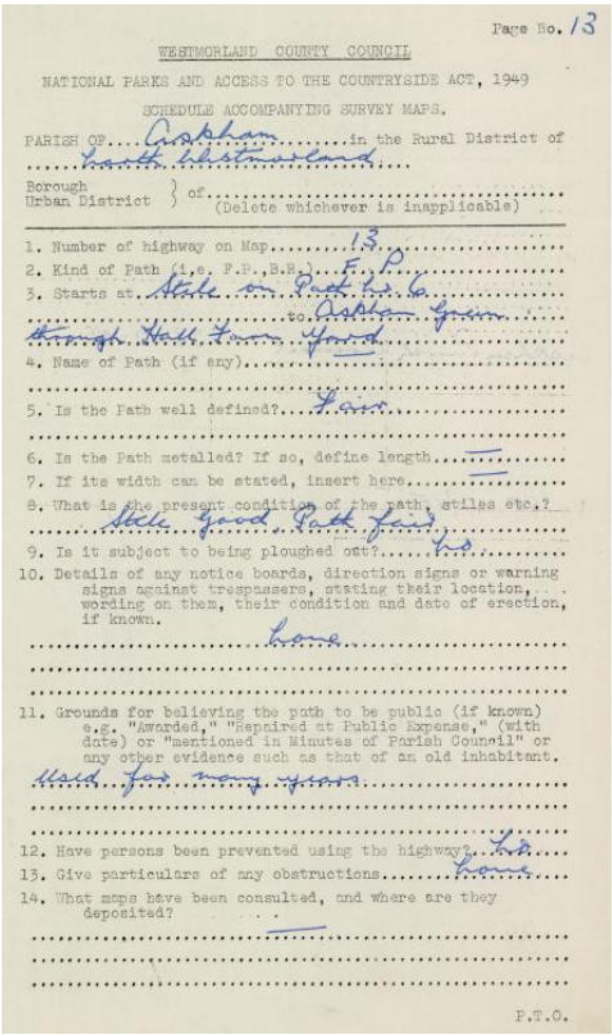
1913 Ordnance Survey Map

19. This later map shows the extent of the path to the point where it enters the main yard (as was) south of the farmhouse buildings. Again, there must have been a way through the yard to the road somehow. And again, logically this would have most likely have been via the main drive to the east.

1953 Parish Submission Map

20. Askham Parish Council show path 13 (in faint blue) as following the Ordnance Survey dashed lines on the above map, then when it reaches the yard – they have shown it going straight across to the road. The only feasible way a footpath could have done this would be to come out of the arched entrance onto the village green (overleaf).

21. Their description of the route merely said 'through Hall Farm Yard'. No mention of the house.



Page No. 13

WESTMORLAND COUNTY COUNCIL

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

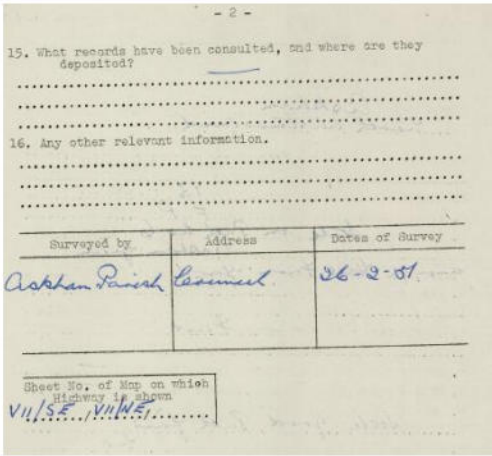
SCHEDULE ACCOMPANYING SURVEY MAPS.

PARISH OF Askham in the Rural District of North Westmorland

Borough / Urban District } of ..... (Delete whichever is inapplicable)

1. Number of highway on Map 13
2. Kind of Path (i.e. F.P., B.R.) F.P.
3. Starts at Stile on Path No. 6 to Askham Green through Hall Farm Yard
4. Name of Path (if any) —
5. Is the Path well defined? Yes
6. Is the Path metalled? If so, define length —
7. If its width can be stated, insert here —
8. What is the present condition of the path, stiles etc.? Stile Good Path fair
9. Is it subject to being ploughed out? No
10. Details of any notice boards, direction signs or warning signs against trespassers, stating their location, wording on them, their condition and date of erection, if known. None
11. Grounds for believing the path to be public (if known) e.g. "Awarded," "Repaired at Public Expense," (with date) or "mentioned in Minutes of Parish Council" or any other evidence such as that of an old inhabitant. Used for many years
12. Have persons been prevented using the highway? No
13. Give particulars of any obstructions None
14. What maps have been consulted, and where are they deposited? —

P.T.O.



- 2 -

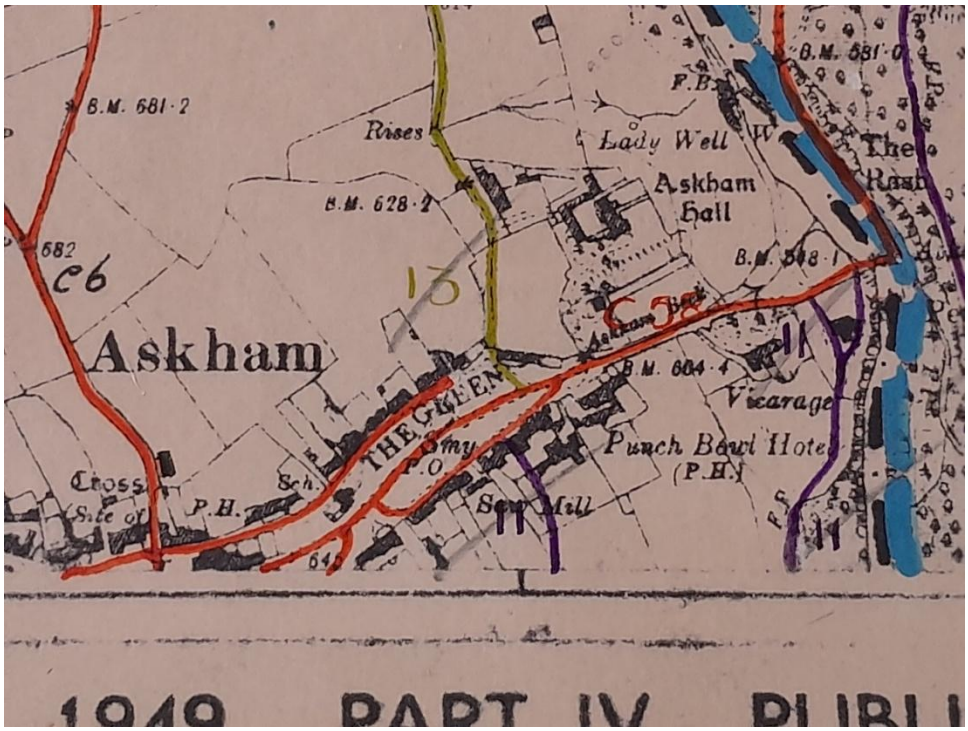
15. What records have been consulted, and where are they deposited? —

16. Any other relevant information.

Surveyed by	Address	Dates of Survey
Askham Parish Council		26-2-51

Sheet No. of Map on which Highway is shown VII/SE, VII/NE

1950s/1960s - the barn doors look as though they were present at the time.



1953/66 Westmorland Definitive Map of Public Paths

22. Following these investigations, it seemed to me that there probably was not enough clear evidence to make a modification order. It is fairly clear that the footpath did not run along the definitive line, but there was no clear evidence of the precise route it did run. And without both, a modification order would not be appropriate.

23. It therefore followed that the best solution to make the path fully usable would be to divert it to the best route possible for all. Various solutions were put forward and between 2003 and 2006 we consulted on a few of these, none of which were fully accepted by one party or another.

24. However, things have changed over the years with regards to usage of the land and the farm itself – and we have been in recent discussions with the owner of the land, and have reached an agreement on what we think is probably the best long-term solution.

25. Our proposal is to replace the whole of A-B on the attached map with a path C-D which runs along the surfaced access track and along the edge of the farmyard buildings.

26. Currently, there is a difficult to use gate just north of Point C, which would be replaced / improved (by us) as part of the change.

27. A few photos illustrate the route(s) overleaf.

Looking northwards from Point C

Looking towards the road and Point D

Southwards from Point D

Northwards towards B – just outside the yard

Point B is possibly the black archway, but it's not certain

Tests to be Considered

28. These are:

- Will the new path 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?

29. Planning Inspectorate guidance, 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.

30. Taking these considerations into account I consider that there is little impact on the convenience for walkers – and if anything it is improved. The current route goes across a field, through a yard and then a house. The proposed route will simply follow a made track – with one gate. The lengths are similar.

The effect of the diversion on public enjoyment of the path or way as a whole?

31. I consider it could be said to be more enjoyable in that walkers will not have to negotiate a farm yard. However, it could be said to be less enjoyable in that they are also deprived from seeing the workings of yards such as this, and some people like to do so. We are best guided by our consultees, which include user bodies – and they all support the change. The Open Spaces Society specifically refer to this point – and accept the change.

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

32. We are not aware of other land being affected.

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

33. There will be minimal impact on the landowner, who has agreed to the diversion. The new route is a concrete/stone tractor track, and walkers will be away from the main yard workings.

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

34. The terminations at both ends of this footpath are moving eastwards. The new terminations will be slightly less convenient for those coming from the west, and then heading westwards from the end of the new path – but this extra distance is only around 70m at the south and 50m at the north. It will be balanced by the increased convenience of those coming from the east and continuing eastwards after using the path. Any other combination will not be affected. I therefore consider that the terminations are substantially as convenient.

Other Considerations Required by Legislation

35. Before confirming a Public Path Creation or 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 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

36. The proposals meet the general aims within the Access & Recreation Strategy (as discussed in the Policy section earlier), in particular the making of orders to reflect match current demand/usage and to suit modern needs (page 12).

37. Limited Mobility - We have a duty to audit the proposals with regard to limited mobility. The new route will all be on a made surface and pretty level – and therefore should not present issues for most with mobility issues, it will be better than the current field in this respect.

38. Impact on the needs of agriculture and forestry - assessment required under schedule 6, of the Countryside & Rights of Way Act 2000. One of the sticking points with earlier proposals was the dairy-based nature of the farm and the gathering point for milking cows being on the track over which the footpath is now proposed to run. The farm has changed and it is no longer dairy-based and so this issue has fallen away. The landowner is happy that it will not greatly impact on their activities.

39. We 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 have to have regard to the conservation of flora, fauna, and geological and physiographical features and the amenity of the countryside. The proposals do not appear to have any effects on these aspects.

40. Defra published a ‘presumptions guidance’ in 2023 to help order-making-authorities when considering diversions or extinguishments of public paths within domestic curtilages / farmyards / commercial premises. The presumption is that we will make orders like this if they satisfy the legislative tests, and this presumption can override our own National Park policies.

Stakeholder consultation

41. We have consulted our usual consultees comprising all the local authorities and relevant user bodies, interested parties, utility companies – along with others whom have requested to be consulted.

42. Those who responded are listed below. There is general support.

Name of stakeholder	**Consultation response**
Askham & Helton Parish Council	Support the application to divert the footpath 305011 as it is the preferred route to improve access.

Westmorland & Furness Council	No objections
Ramblers	Thank you for your email and letter about this proposed diversion. We have visited the site and noticed changes since the site visits in 2000 and 2003. At those visits the present proposal was mentioned but rejected by both the farmer and us, as it went through an area where the cows gathered for milking. Now the dairy business has closed and it is a good clear route. Once beyond the buildings it is attractive. We noted that there is now a firewood processing business on the site, and that there is a retrospective planning application currently with the LDNPA for this use. The processing takes place away from the proposed path, but the path will share part of the vehicle access route. Given the low number of vehicle movements, we are happy that there will be little effect on path users. We have no objections to the proposed diversion.
Wainwright Society	The Wainwright Society has no comment to make on this proposal, other than to note that we are pleased to see the local network of footpaths leading to and from Askham and Moor Divock being maintained and actively managed.

Open Spaces Society	The use of farm building doors for a PROW is not unique and it can be part of the enjoyable character of a walk. In this case the proposed diversion is easier to use and all the local vernacular features, of which the village is so rich, will still be available for the walker to view. The OSS does not raise any objections to the proposal.

Demonstrating best value

Work Programme and Relevance to This Case:

43. This matter has been around for many years, and we have been trying to resolve it on-and-off for 15-20 years. It is timely to complete this work now whilst we have the support of all involved and following the changes at the farm.

44. **Challenged –** The **challenge** is for us to achieve our policies without significant financial or staff implications. The proposed diversion will contribute to the achievement of our policies in relation to public enjoyment without significant financial or staff implications.

45. **Compared –** We have **compared** our casework completion rates with other authorities, and our rate of processing these sorts of orders is roughly comparable. The diversion will align the definitive map and situation on the ground and will improve our ‘ease-of-use’ performance indicator if the path is selected for survey in the future.

46. **Consulted –** We have **consulted** user bodies, the Local Access Forum, and other interested parties as part of the process, their responses and our comments are above.

47. **Compete –** Processing public path orders is not a **competitive** procedure. Westmorland & 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.

Finance considerations

48. Our charging policy is that 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. This is outlined 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.

49. The costs for this diversion are £3,150 in staff time for the legal work, and two adverts in the Cumberland & Westmorland Herald costing around £250+VAT each. We have also offered to replace the gate at Point C which will cost around £250 in materials (plus two days from the field staff).

50. Although the main beneficiary could be said to be the landowner, as it will remove the footpath from their farmhouse, our investigations cast a strong doubt over whether the path was correctly recorded in the first place. It is therefore more akin to resolving a definitive map issue, and finally making the path fully walkable. Consequently, I consider that it is appropriate that the LDNPA waive/meet all the costs associated with this proposal.

Risk

51. There is a risk that the order may be objected to. This risk has been mitigated as far as possible through initial agreements with the landowner and through the pre-order consultation process.

Legal considerations

52. The order will be made under section 119 of the Highways Act 1980 and 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 do such orders through our Agency Agreement with Westmorland & Furness Council. The action strikes a reasonable balance between private and public rights.

53. We have given consideration as to which section of the Highways Act applies here. The proposal changes the termination points of both ends of the path, and there is no point on the new path that touches the current path. The Highway Authority has previously advised us to make concurrent creation

(s26) and extinguishment (s118) orders in these circumstances. Whilst there is nothing necessarily preventing this here, there also appears nothing within section 119 which prevents a diversion order also being applicable. Section 5.55 of DEFRA Rights of Way Circular 1/09 states: '*Concurrent creation and extinguishment orders should only be made to effect a diversion of a public right of way in circumstances where section 119 cannot be used, for example where the new route is of a different status, or where one end is not on a public highway. Otherwise section 119 should be used in every case'.* The effect of s119 is to add and extinguish equivalent sections of a right of way to divert the whole of the footpath, and consequently section 119 seems most applicable.

Human resources

54. The work involved in the legal and administrative parts of this proposal is approximately 60 hours from members of the Ranger teams, and one hour from a member of Legal Services. The work involved is all part of our day-to-day duties, and over half of it has already been undertaken. The Field Team will spend two person days replacing the gate at Point C if the order goes ahead.

Diversity and Sustainability implications

55. I have not identified any significant diversity, environmental, economic or social effects.

Summary

56. The proposal will resolve a very long-standing issue (potentially 70+ years' old), and will benefit the landowner and the public. All of those who responded to the consultation are in agreement with the proposals.

57. I recommend that we make the necessary diversion order to bring this into effect.

Background papers	Case file reference: 1412.305.01
Author / Post	Nick Thorne, Senior Rights of Way Officer
Responsible Director	Stephen Ratcliffe, Sustainable Development
Date written	1 April 2026

Authorised by:

[redacted]

Name: Jack Holmes

Date: 15th April 2026

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, and reference is made to them, where appropriate, in the discussion part of the paper.

- 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.