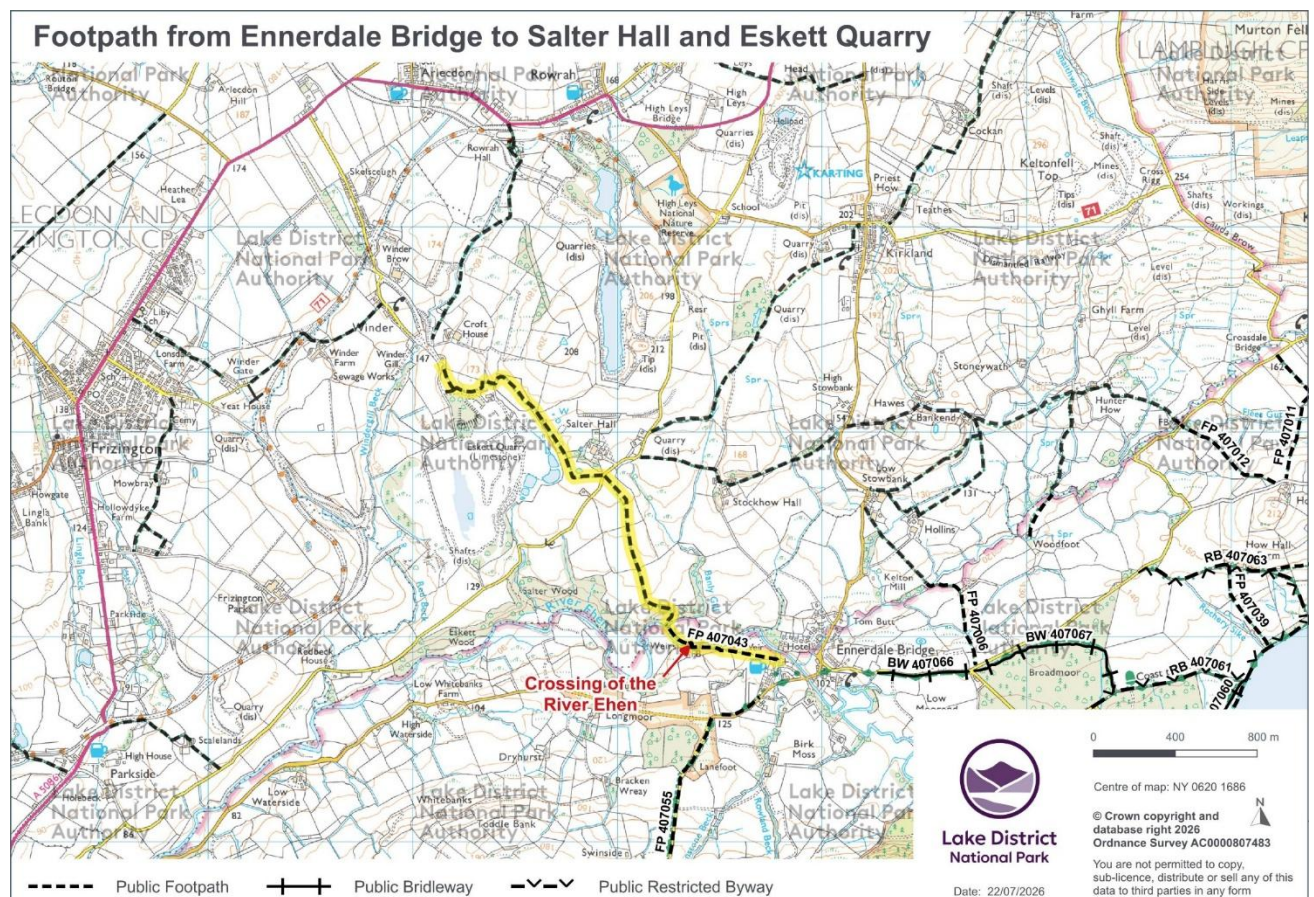


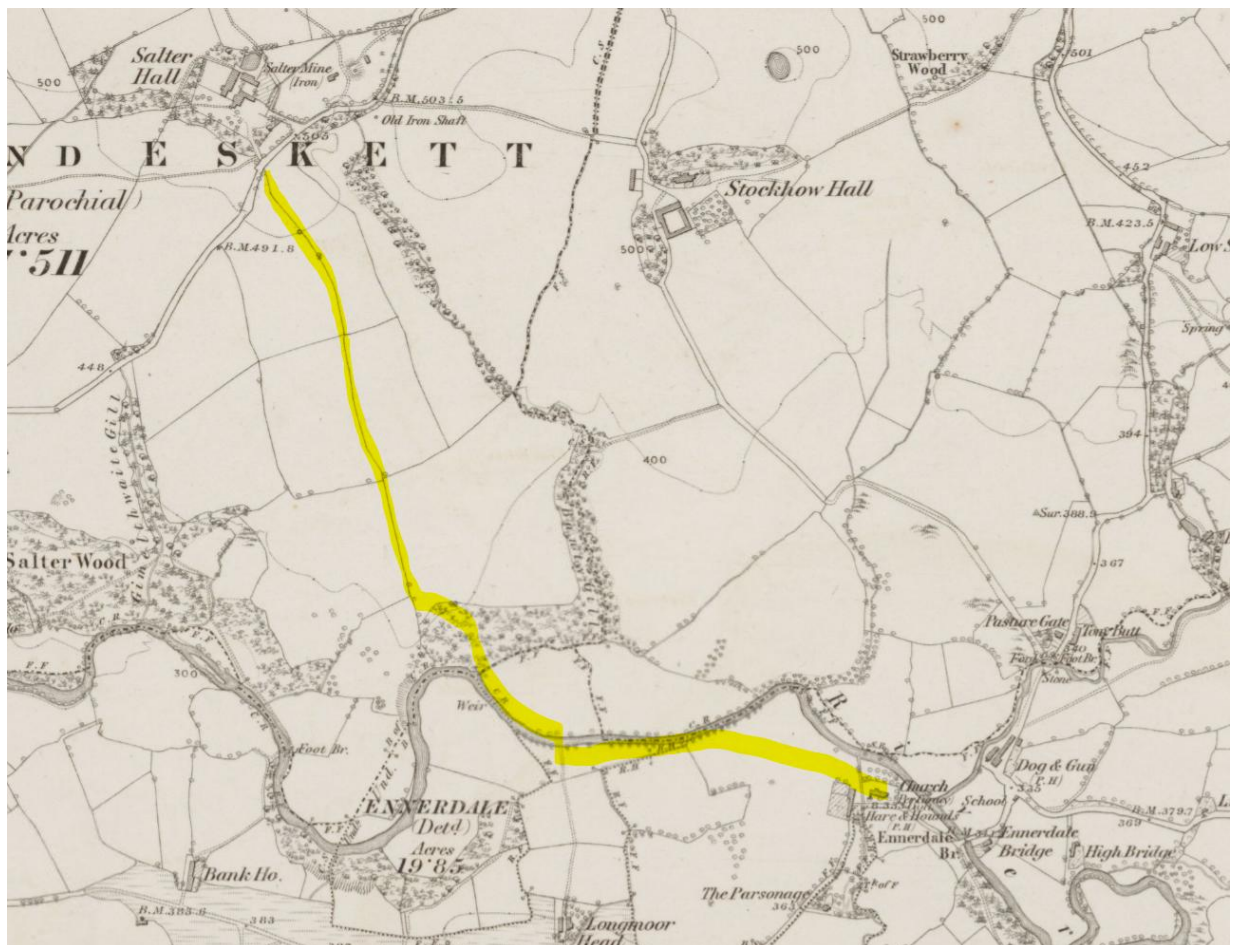
Annex 2: Footpaths across River Ehen, Longmoor Head, Ennerdale & Kinniside Parish – Assessment and Discussion Paper

History of the public footpath crossing of the River Ehen north of Longmoor Head Farm

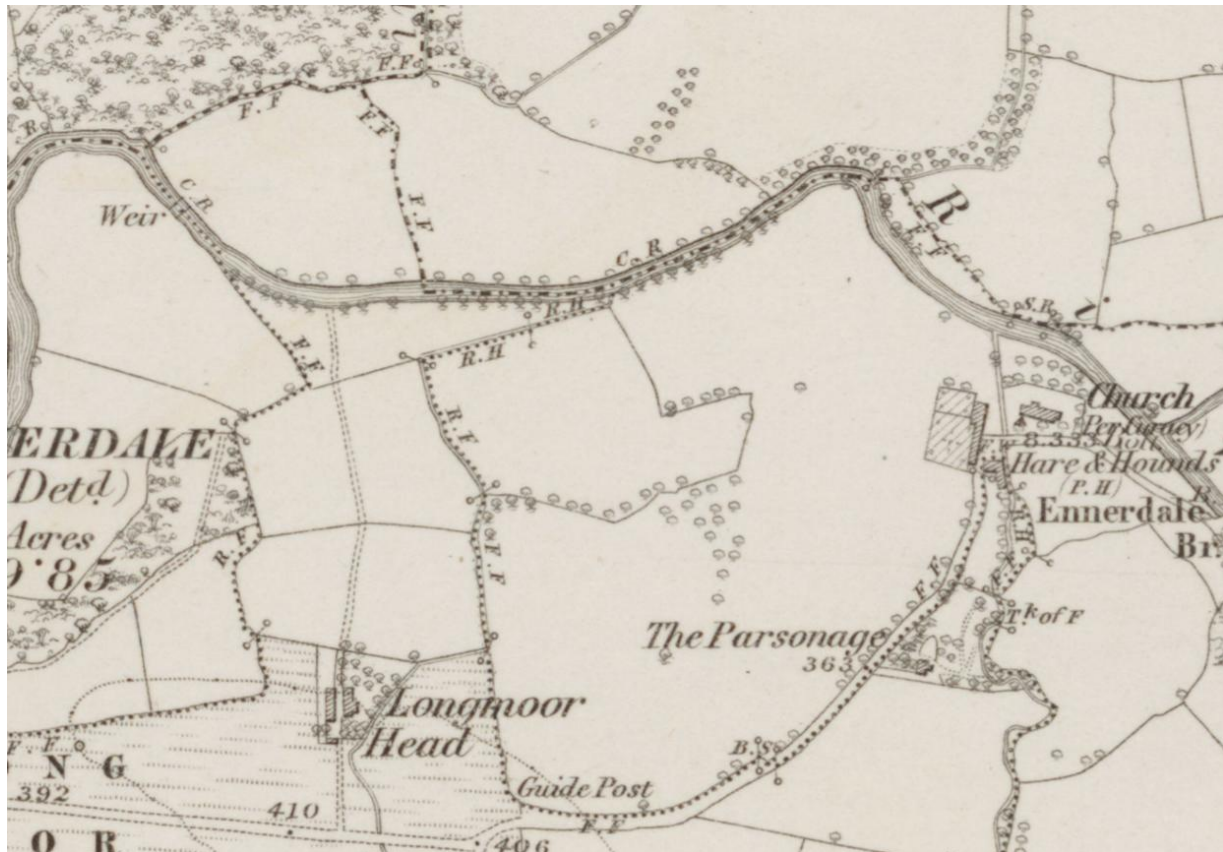
1. The footpath concerned runs from Ennerdale Bridge to the River Ehen, then across the river, and on to Salter Hall and Eskett Quarry (both outside of the Lake District National Park). As shown on the map below.
2. Most early nineteenth century county maps concentrated on roads, and rarely showed field footpaths. So, when individual footpaths precisely first came into existence is rarely proven, but we have strong indications for this path.



3. The first map to really show field paths was the Ordnance Survey mapping of the 1860s. The 6" map of 1863/67 (below) did not show this footpath as being in physical existence at that time (the approximate line of the current footpath is highlighted in yellow – following the field boundaries). It shows a track running northwards from the farm to the river – so it can be assumed that there was some means of crossing the river in carts for the farm at that time, although no ford is shown – and there is no indication that it was available to the public.



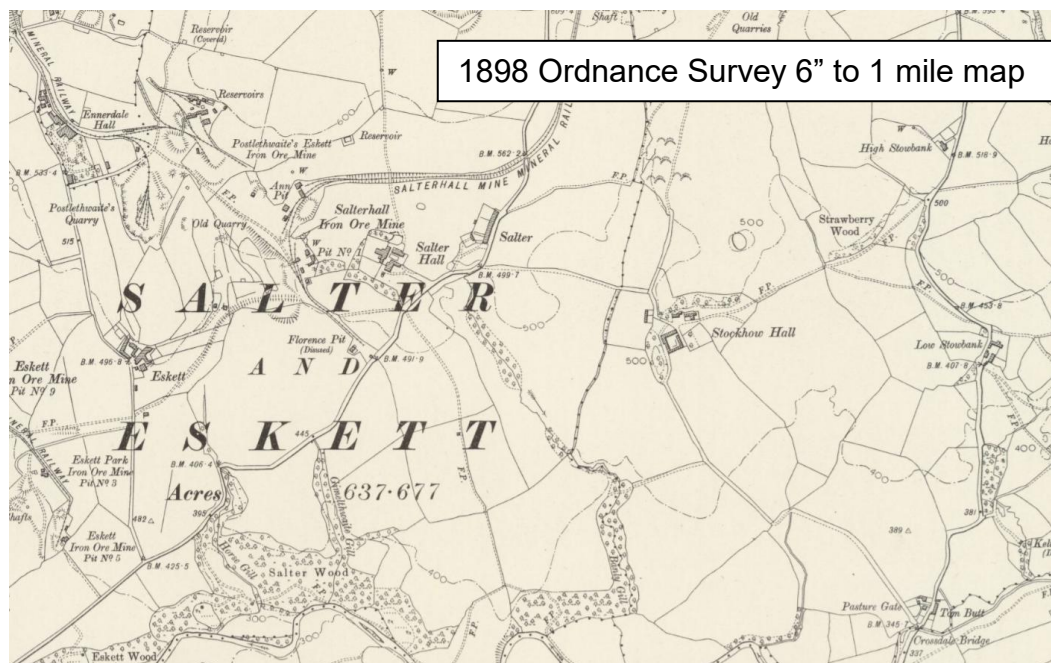
1863/1867 Ordnance Survey 6" to 1 mile map



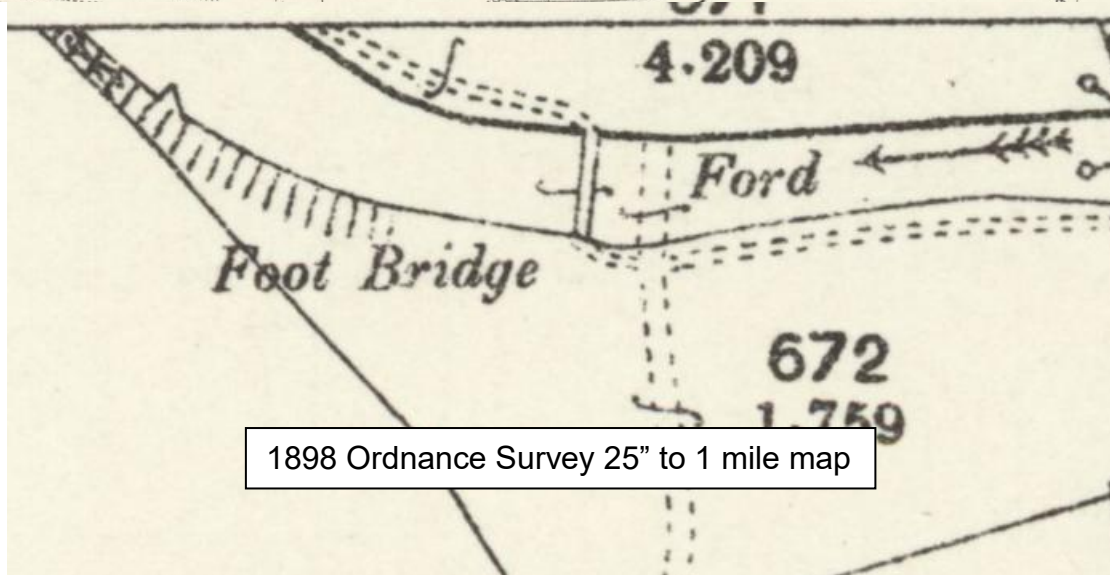
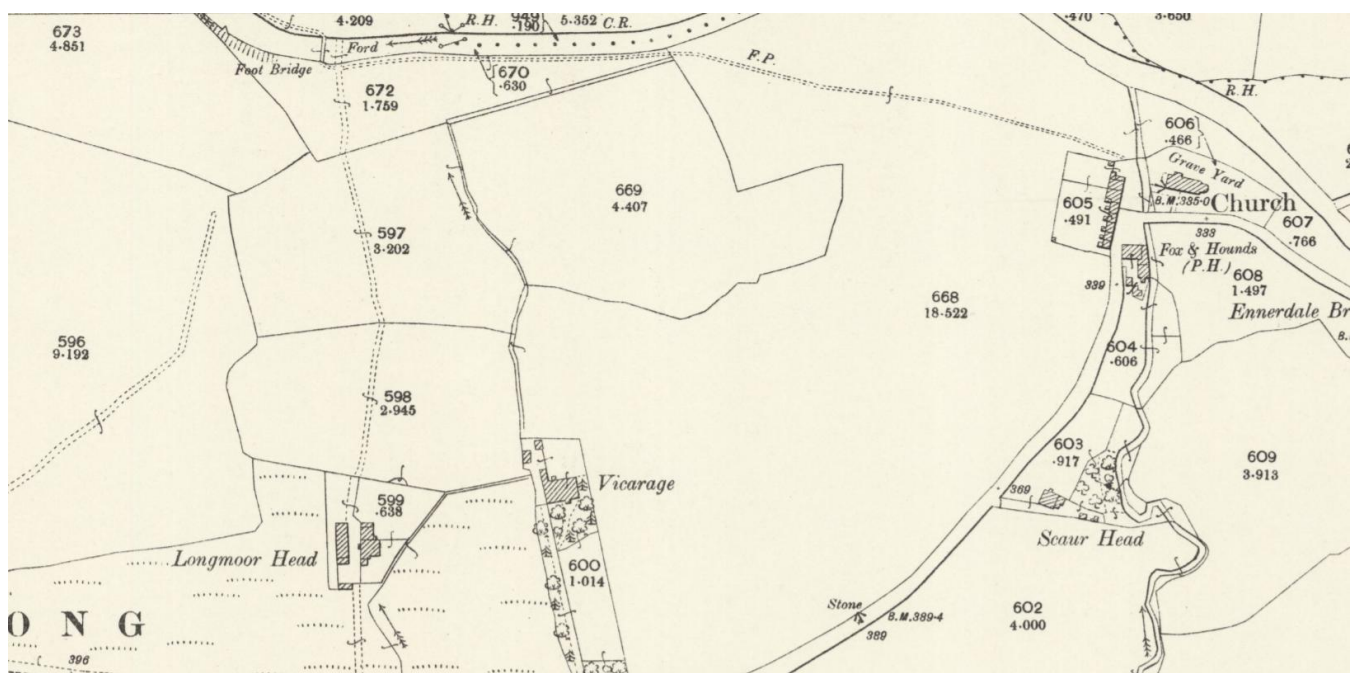
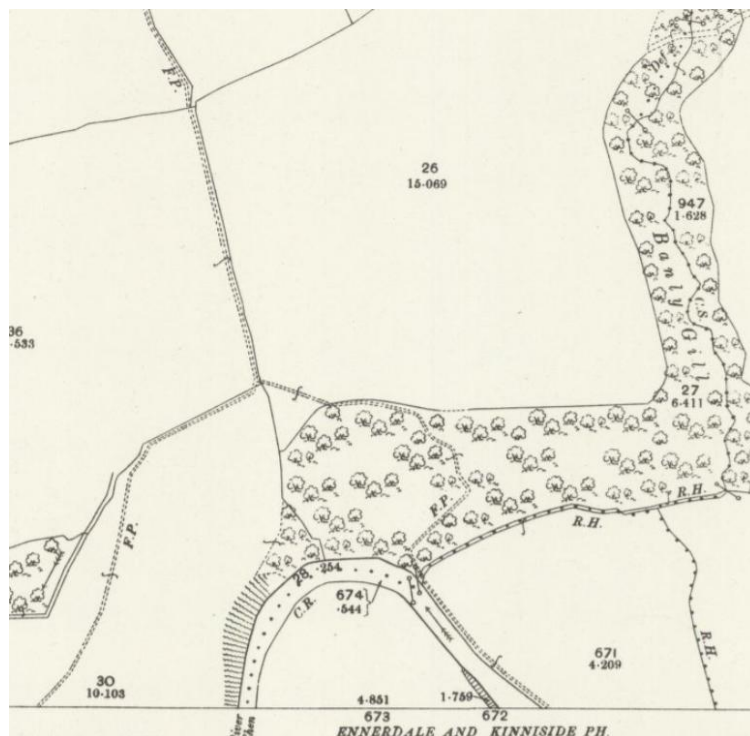
1863/1867 Ordnance Survey 6" to 1 mile map

- the bold dashed lines with annotations such as FF, CR are administrative boundaries (parishes / townships)
- The track from the farm is shown with double dashed lines

4. The 1898 Ordnance Survey Maps are the first to show this footpath. The map also shows that the footpath ran to Salter Hall and Salterhall Iron Ore Mine. A quick internet search¹ reveals that this mine was in operation from around 1877 to 1910, and the quarry continued to around 1927. The strong inference is that the footpath developed (or was created) as a route for workers at the mines to reach them from Ennerdale Bridge, or for miners to reach the pubs and facilities in Ennerdale Bridge.
5. The overview map below is the 6" to 1 mile map. Overleaf is the 25" to 1 mile map – which shows the crossing site in more detail. It clearly shows a Ford as a continuation of the track from Longmoor Head Farm (presumed to be a private track) with a Foot Bridge just west / downstream of the Ford. The Foot Bridge was clearly for the footpath, and there is no actual mapped link between the northern end of the Ford to the footpath heading westwards.

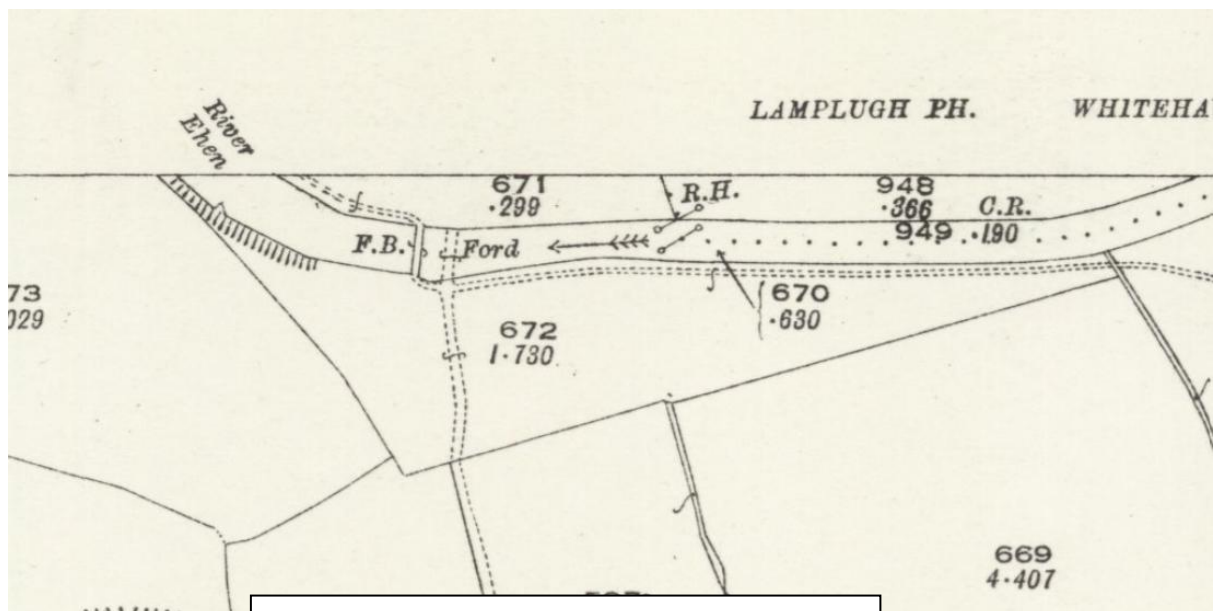


¹ [Durham Mining Museum - Salter Hall \(Iron Ore\)](#)



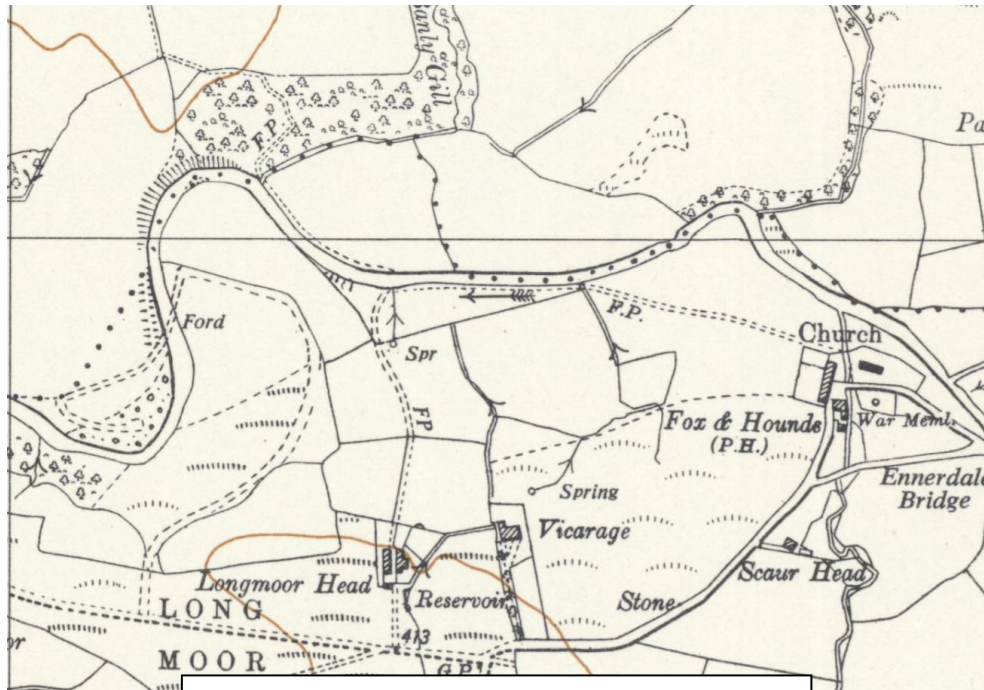
1898 Ordnance Survey 25" to 1 mile map

6. The next map is the Ordnance Survey map of 1923. This again clearly shows the bridge (F.B.) and Ford layout. The conclusion is that from at least 1898 (and probably before) to 1923 (and probably after) the footpath was served by a footbridge. Indeed, if we accept that the footpath came into existence to enable workers to get to the Iron Ore mine from 1880 onwards, it is logical to conclude that the footbridge was provided to enable this to happen. And therefore, it can reasonably be concluded that the original means of the public crossing the River Ehen was by the footbridge just west/downstream of the private vehicle / farm ford. Unless the track through and from the farm was also a public path, in which case that could have also incorporated the ford. There is no indication that this track was public.



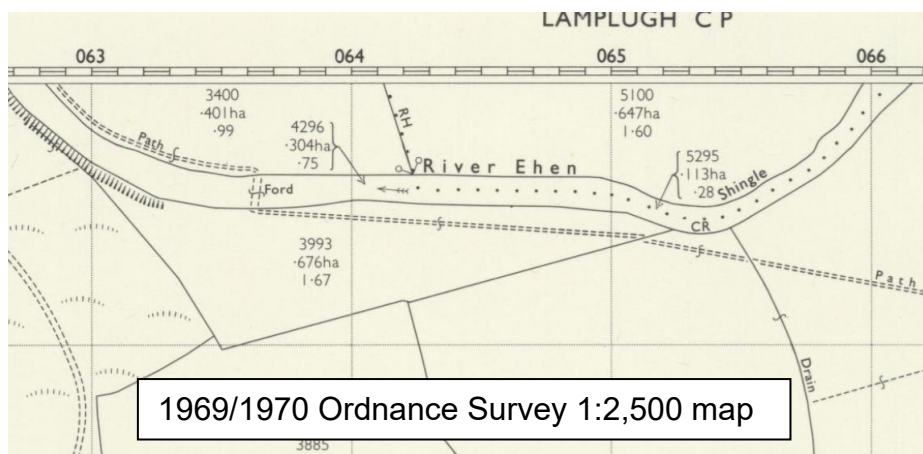
1923 Ordnance Survey 25" to 1 mile map

7. The next map of relevance is the maps published by the Ordnance Survey in the 1950s at 1:10,000. This particular map is described as “Surveyed / Revised Pre-1930 to 1956, Published: 1956”. So, it cannot be pinned down to a specific date. This map shows a footpath (F.P.) on either side of the river – but shows no crossing point at all, neither a ford nor bridge. It does however indicate that the track running from Longmoor Head Farm was now considered to be a footpath rather than a track (but not automatically public).



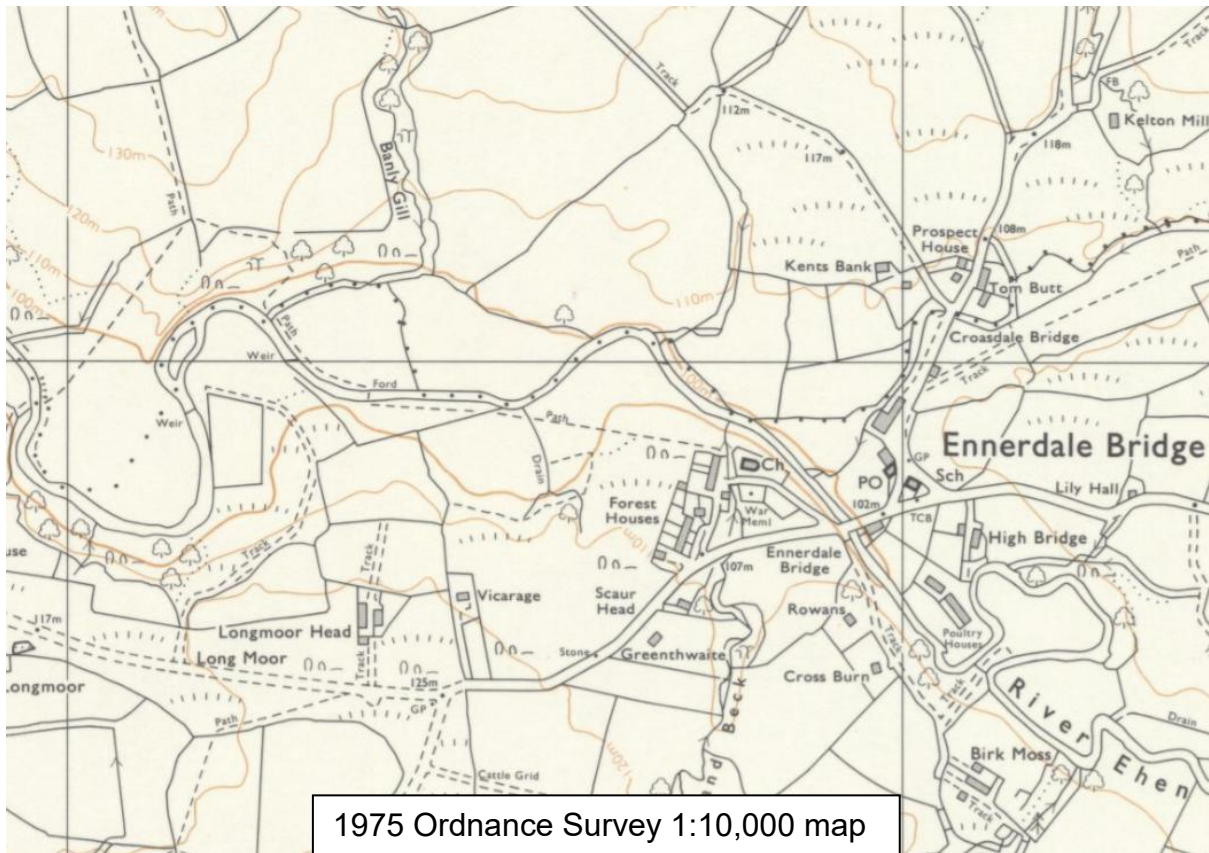
1956 Ordnance Survey 1:10,560 map

8. The 1970 1:2,500 map shows no bridge being present, and the footpath using the ford shown in previous maps. This ties in with a statement made by the then parish clerk to a public hearing in 2009 that the bridge downstream from the ford washed away in 1947 (but see later).



1969/1970 Ordnance Survey 1:2,500 map

9. The 1975 1:10,000 map shows the same. This formed the base map for Cumbria's 1976 Definitive Map.

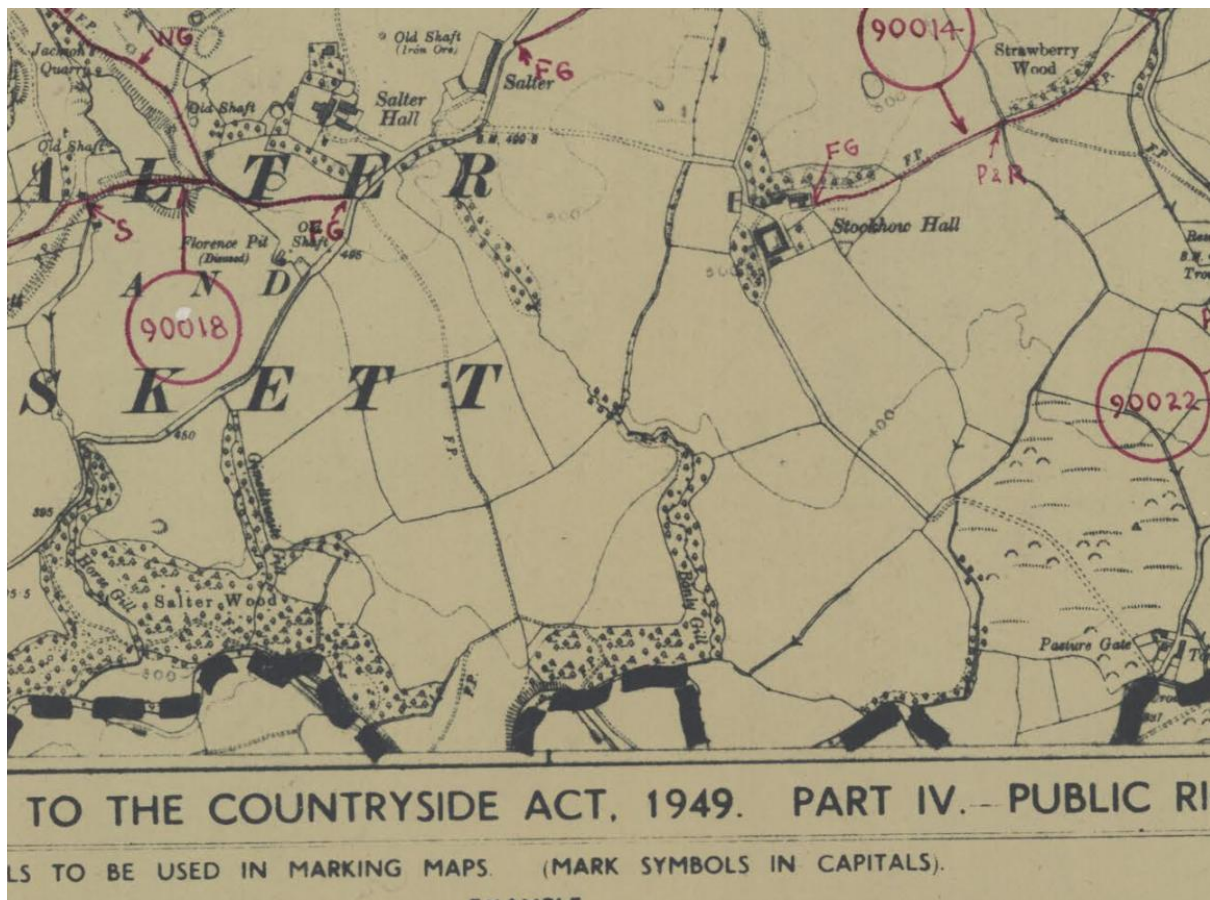


10. Turning to how this path became recorded on the definitive maps – we start in 1950-51 when the Ennerdale & Kinniside Parish Council were tasked with marking on the 1923 OS 6" map the routes they were claiming to be public rights of way within the parish. The parish council did not claim the footpath themselves. The map below being the one submitted by the council (the big thick black line is the parish boundary).

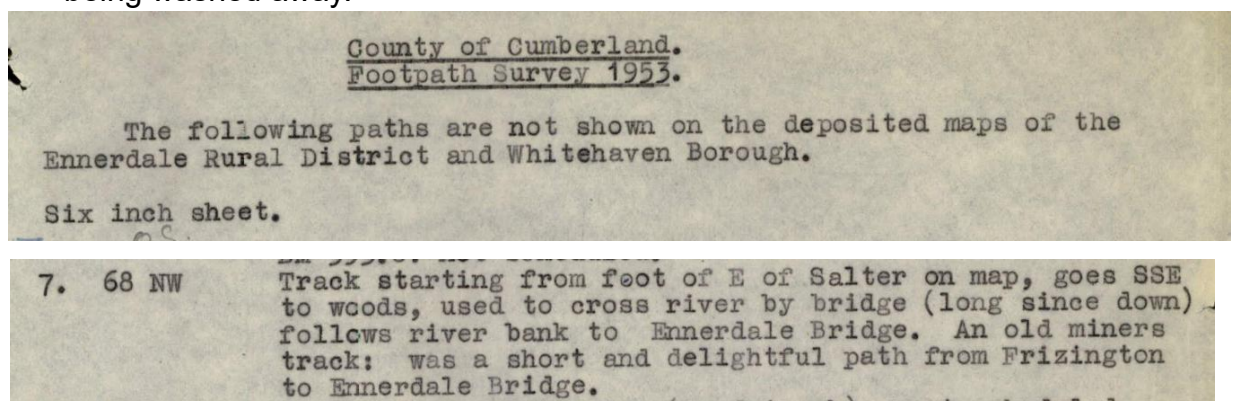


MAP		
No. 5 / 10 / G8SW		
Surveyed by	Address	Date
Ennerdale & Kinniside P.C.	Roughly Ennerdale C. Blair	15.3.51
I CERTIFY that this Map records the information required to be submitted by my Council under Sect. 28, Part IV. of the National Parks and Access to the Countryside Act, 1949. <i>H. Williams</i> Chairman/Clerk Position of person signing Date 15.3.51 <i>Reed</i>		

11. Nor was there a path claimed by Lamplugh Parish Council – the parish north of the river, as the Draft Map for the rural district was published, and it did not contain this path (the claimed paths were shown in red)



12. The omission of this path led to a submission from the Ramblers Association, who listed a number of paths in the parish / area that they considered had been wrongly omitted or required some other alteration. The Ramblers described the path as follows, and the schedule filled out by them described the path similarly – as a ‘previously’ ‘well used path’ (previous to the bridge being washed away).



FORM F.P.1

CUMBERLAND COUNTY COUNCIL.
HIGHWAYS AND BRIDGES DEPARTMENT.

Page No.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949
SCHEDULE ACCOMPANYING SURVEY MAPS.

PARISH OF Baltes & Great Langthigh in the Rural District of
Ennerdale

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

1. Number of highway on Map R917 2. Kind of Path (i.e. F.P., B.R.) F.P.

3. Beginning at Baltes Hall Road and ending at Ennerdale Bridge Church

4. Name of Path (if any)

5. Is the Path well defined? In parts - mostly.

6. Is the Path metalled? If so, define length

7. If its width can be stated, insert here 12"

8. What is the present condition of the path, stiles, etc.? Path good in part, stiles ~~not~~ obstructed

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.
An old miners track.

(Continue overleaf if necessary).

12. Have persons been prevented from using the highway? Not known

13. Give particulars of any obstructions Stiles obstructed or removed.

14. Names of owners of freehold and previous owners, if known, for past 30 years, ...

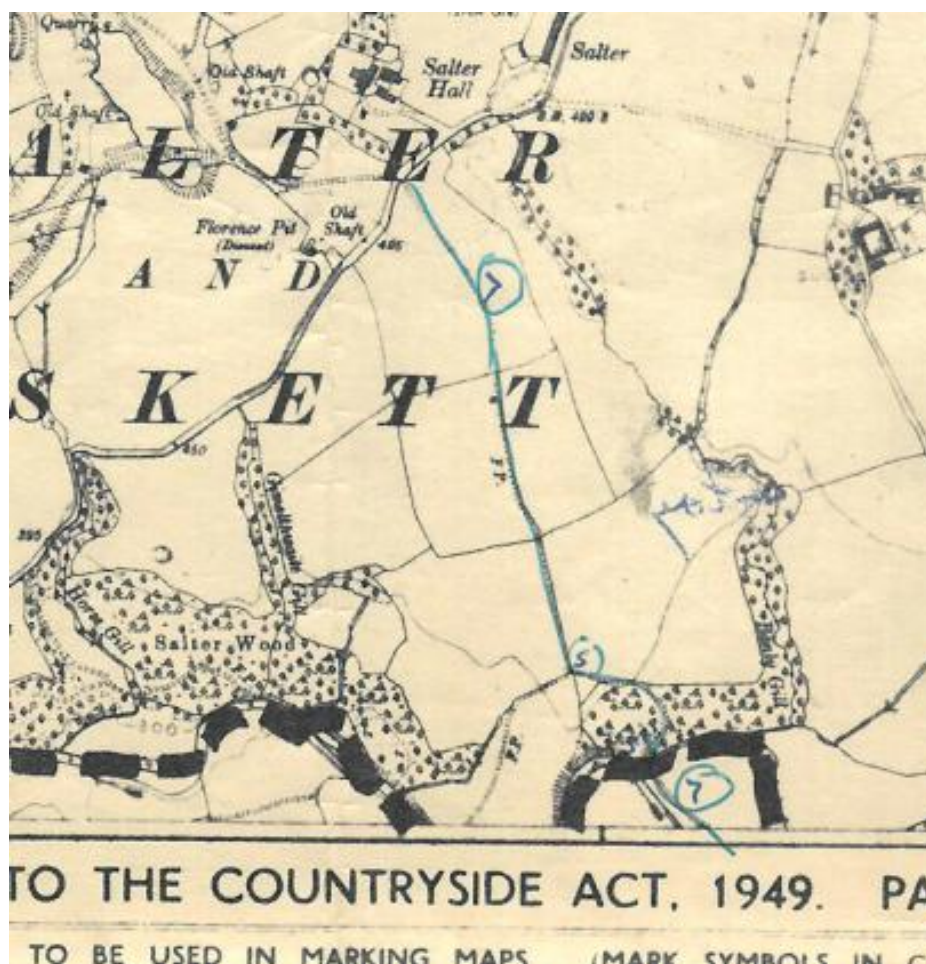
15. What maps have been consulted, and where are they deposited?
Ennerdale RDC

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

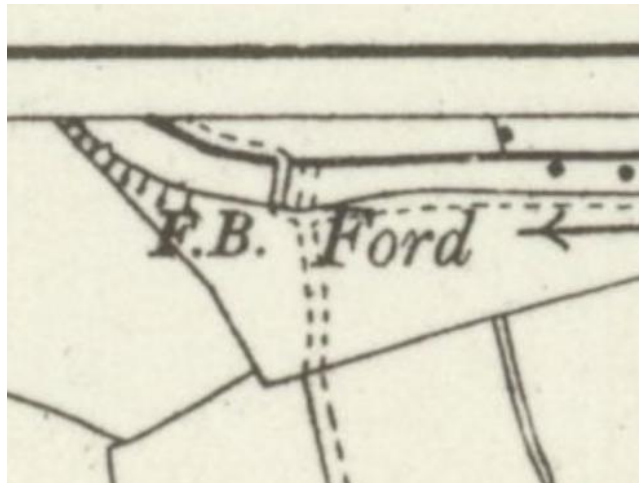
17. Any other relevant information Path was used regularly without obstruction until bridge over river was washed away in about 1935. Previously was well used as a pleasant & shortest route from Windermere to Ennerdale

Surveyed by	Address	Dates of Survey

13. The map accompanying this (top) was the Lamplugh sheet only – and the line was then replicated on the Cumberland County Council's consultation map (bottom).



14. The inclusion of this footpath was not opposed, and so Cumberland County Council included it on their 'Provisional Map'.
15. The map below is the 1923 OS 6" map, which was the base map being used by the parish and county councils.



16. The map below is the provisional map. It can be seen that they showed that the claimed public footpath crossed the river by means of the missing footbridge, not through the ford. Regardless of whether the bridge was there at the time or not – what they were showing is that the historic route of the path was over the bridge site. The wording from the Ramblers also made it clear that they were claiming the right of way over the bridge site, and implied that usage had dropped / ceased since it was washed away. There is no mention of the path being through the ford, or of any public usage of the ford.

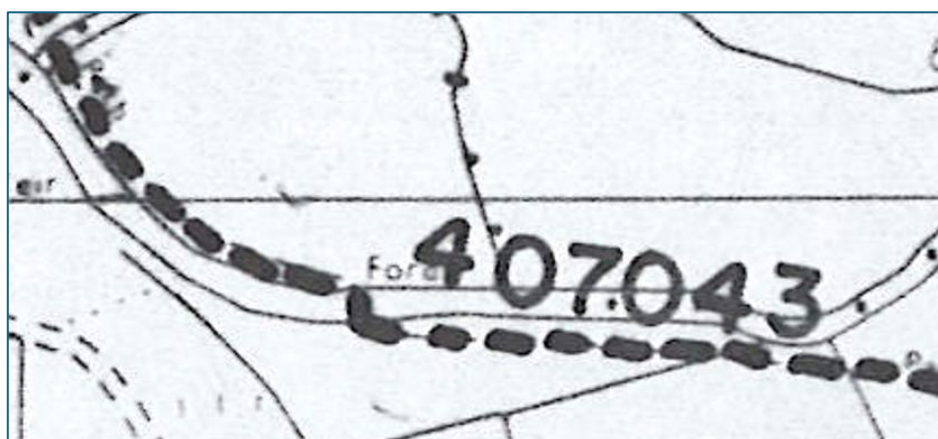


17. The Definitive Map then produced by Cumberland County Council could also be interpreted as implying that it went to the west of the ford (ie: over the bridge that was no longer there) – as the purple line clearly goes beyond the ford location before crossing the river (ie: to the 'd' in Ford, and beyond the dotted line coming out of the ford). However, the accompanying definitive statement (for Lamplugh, not Ennerdale) described it as going 'over ford'.



900 66 NW Footpath From road south of Salter Hall south-south-easterly through fields to
27 68 SE and over ford across River Ehen, thence easterly to road at Ennerdale Church.

18. In 1976 the details were transferred to the Cumbria Definitive Map. Again the lack of a bridge was presumably noted – and the right of way was this time more clearly shown as going through the ford, and again described as such in the Definitive Statement (this time for Ennerdale & Kinniside).

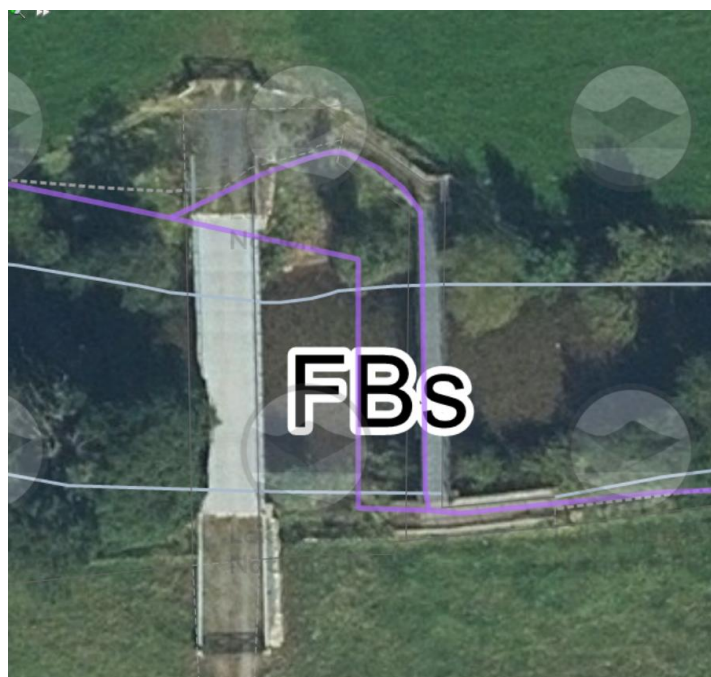


COUNTY OF CUMBRIA National Parks and Access to the Countryside Act 1949 Countryside Act 1968		DISTRICT COPELAND STATEMENT OF RIGHTS OF WAY		PARISH OF ENNERDALE AND KINNISIDE Sheet 8 of 9 Relevant Date 1 January 1976	
PATH NO	PATH TYPE	DESCRIPTION	SHEET NO		REMARKS
407042	Footpath	From HW 407028 where it crosses Woundell Beck southerly to near junction of Deep Gill and Beck, joining FP 407036, thence south-south-easterly up north-east side of Gill to rejoin HW 407028.	NY1115		
407043	Footpath	From junction with FP 412027 (Lamplugh) at parish boundary south-easterly along side river crossing Ford thence easterly to road at Ennerdale Church	NY0413		Renumbered 1976 Review previously part of FP 412027 (Lamplugh) (90027).
407044	Footpath	From northern end of the existing FP 407022 at Water Treatment	NY0413		Added during 1976

19. There was no bridge present for around 55 years after it washed away (1935), then in the 1990s we worked with the landowner, Groundwork Trust, and the local primary school to install a wooden footbridge across the river. The schoolchildren carved patterns in the handrails. Unfortunately, we have no records relating to the bridge – but it was built just to the east / upstream of the ford site (that is – on the opposite side to the original bridge). Below is a photo of the bridge and ford in around 2005-08.



20. This bridge was damaged by fire and vandalism in 2003, and although repaired, was intermittently closed, and from around 2004/2005 we planned to replace the bridge. This finally happened in around 2010-2012 when it was replaced with the current stone and steel structure. In the interim, a fence was erected along the southern riverbank, requiring the diversion of footpath 407043 to run along the riverbank instead of on its mapped route slightly in the field. This diversion was approved by the Secretary of State in 2009.
21. The recording and alignment of the path across the river was not altered as part of these proceedings.
22. With regard to the new footbridge, we proposed to divert the 'ford footpath' from the ford to the new bridge. However, the landowner opposed this, and instead we entered into a creation agreement with the landowner which created a new public footpath across the bridge (FP 407059). The result was two public footpaths across the River Ehen – one over the footbridge and one through the ford.
23. However, due to improved mapping of physical features by the Ordnance Survey, it has become clear that the definitive line as mapped is very slightly to the east of the actual physical ford. By a few metres only. This can be seen most clearly on the aerial photograph below. The purple lines are the definitive lines of the public footpath. The northern exit of the ford can be seen just to the west of the definitive line.



24. In 2021 planning approval was given for a new vehicular bridge which would enable vehicles and cattle to cross the river without using the ford. The bridge was funded by Natural England as part of a water quality improvement scheme and to protect the freshwater pearl mussels that have been identified in the river in this area. That is – the bridge was built to remove disturbance to the riverbed from usage of the ford.
25. Unfortunately, the rights of way staff were not consulted on this application – and the potential impact on the two public rights of way was not taken into account when granting approval. The result is that the definitive lines of both public footpaths are obstructed by the handrails and northern ramp of the vehicular bridge. This is seen clearly on aerial photography, and we have done a lot of other work to check that these alignments are as they look. However, it should also be noted that public access has not been interrupted – merely moved slightly to the north around the top end of the vehicle bridge.
26. This has led to the current situation where we have one physical path across the footbridge and around the top end of the vehicle bridge, and another physical path down the steps on the west of the footbridge, then through the ford, rejoining the other path to go around the top end of the vehicle bridge.
27. But the legally mapped routes are across the footbridge then through the handrails, and across the river but very slightly to the east of the ford, then through the bridge itself (and even if the bridge weren't there, the definitive line would not really be usable as it would involve scrambling out of the ford's ramp side).
28. This has led to the current situation. This is what we are attempting to rectify; so that we end up with mapped rights of way that are fit for use, unobstructed and where the lines on the ground are the same as the lines on the definitive map.

Photographs of current situation

Footbridge on the right, new vehicular bridge on the left, ford in the middle – definitive lines go across the footbridge, and across the river in between the footbridge and ford.



Approach to the site from Ennerdale Bridge – along the fenced riverbank, then up a slope to the footbridge. To reach the ford, you go up the slope, then down some steps.

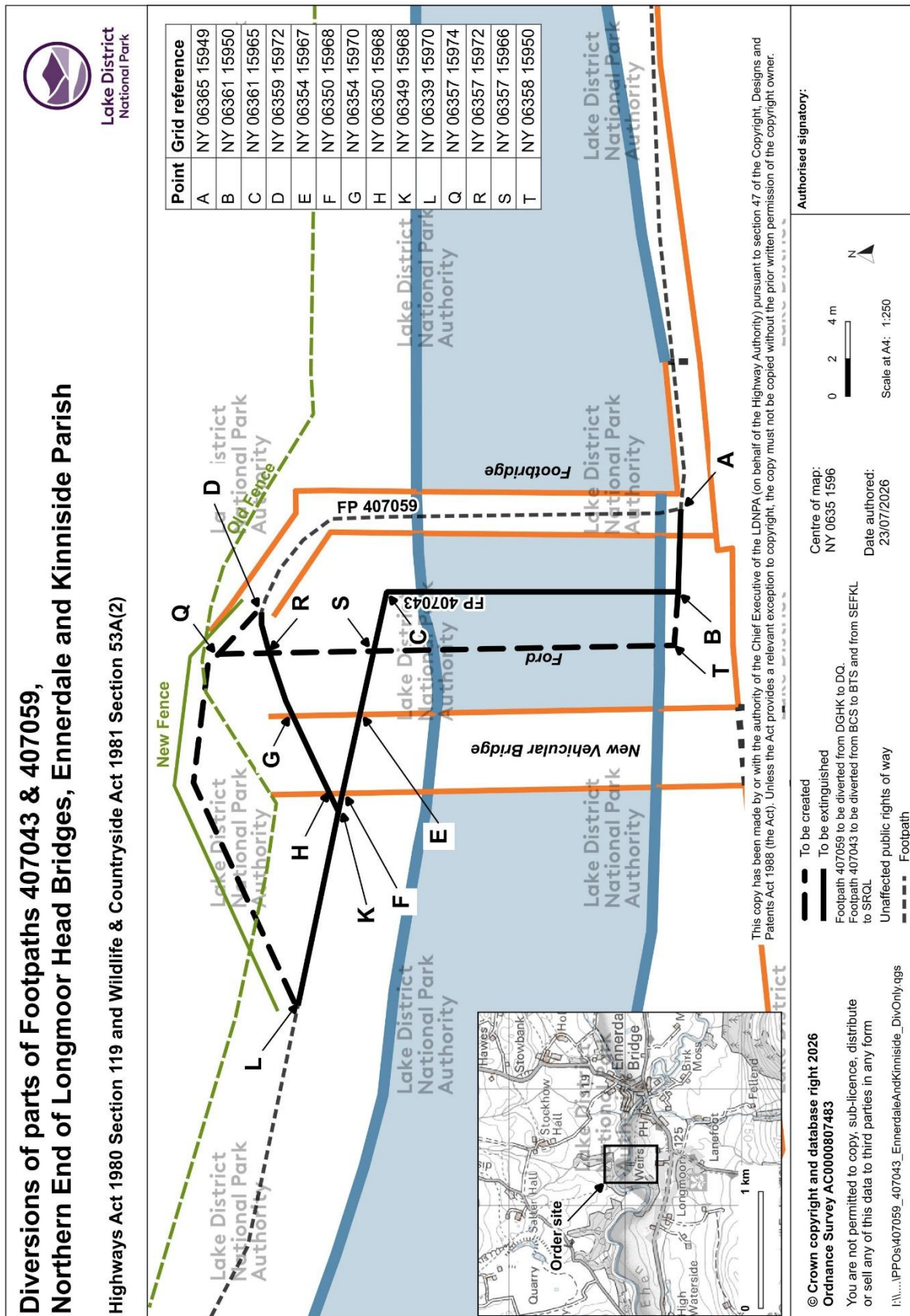


Proposals

29. We have consulted our usual consultees – which include the local councils, user bodies, and other interested parties. Their responses inform the discussions around expediency, grounds and tests. For convenience, from hereon I shall refer to the two separate paths as the ‘footbridge path’, and the ‘ford path’. Also, for convenience it is easiest to ignore the numbering of the paths, and concentrate on the actual paths as they were / are on the ground (whatever decision is made – we will sort the numbering and exact wording of the relevant orders in due course).
30. **FOOTBRIDGE PATH** – the proposal is to divert **DRGHKL** to **DQL** (see maps on next two pages)
31. **FORD PATH** – the proposal is to divert **BCSEFK** to **BTSRQ**, or alternatively to extinguish **ABCSEFK**

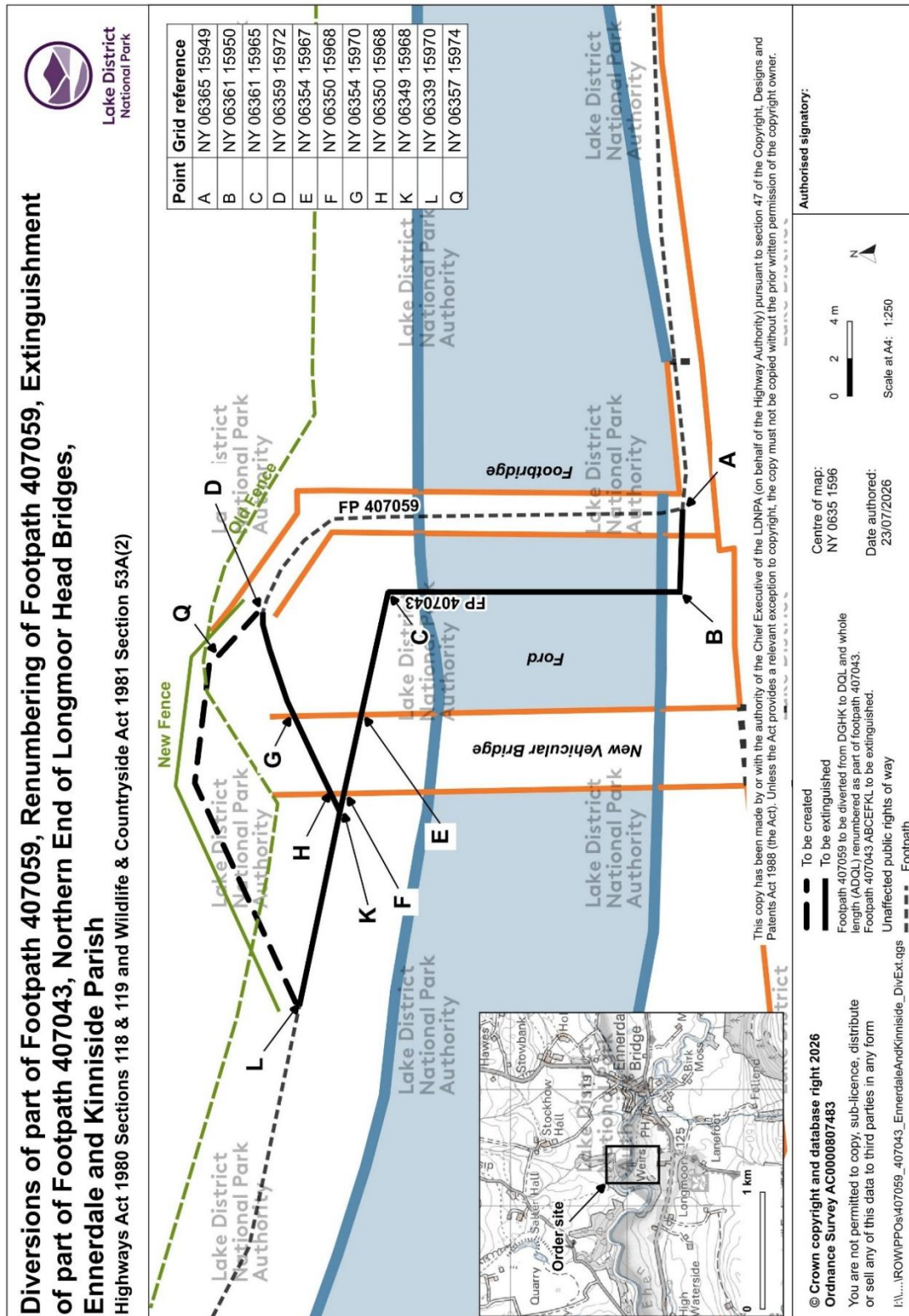
Initial Consultation Responses

32. We initially consulted on the proposals to divert both paths, as on this plan.



Follow-up Consultation Responses

33. As a result of the responses to that consultation, we reconsulted on a secondary proposal – still to divert the footbridge path, but to extinguish the ford footpath (as on map below).



34. We also asked the landowner for information on how many people they had observed using the ford since the bridge had been built in the 1990s, and we asked our other consultees the following questions.

- *Have you, or your members, used this ford on foot to cross the river since the footbridge was installed in around 1990 (other than during the period when the footbridge was closed / being replaced)?*
- *Are you, or your members, likely to use a public highway on foot through this ford in the future?*
- *What do you, or your organisation, consider to be the likelihood of the wider public using a public highway on foot through this ford in the future?*

35. The responses to both these consultations are in Annex 3.

36. In essence:

	Footbridge Diversion	Ford Path	Past / Future Usage of Ford Path
Landowner	Support	Should be retained	No response / information
Councils	No concerns raised	Question need for this path	None known, future usage unlikely, but cannot speak for everybody.
Individual		Required in case bridge collapses, cost-free to keep	Unlikely I would use it again in the foreseeable future. Do not consider it likely that the public would use the ford. Don't recall having seen members of the public using the ford.
Environmental bodies	Support	No need, and don't support any diversion – should be extinguished	Likely to be low
User bodies	Accept / support	Question the need for keeping the ford path	No identified users, minimal future usage.

Grounds and Tests for Diversion

37. The grounds and tests for a diversion (s119 Highways Act 1980) 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.
38. 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

Diversion Tests to be Considered

39. 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.

Grounds and Tests for an Extinguishment

40. There is only one reason in law for the extinguishment of a right of way (section 118, Highways Act 1980), namely; where it appears to the Authority

that it is expedient to stop up (extinguish) the path on the ground that it is not needed for public use. And the following must be taken into account:

- The extent to which it appears that the path or way would, apart from the order, be likely to be used by the public.
- The effect the extinguishment would have on the land crossed by the path.

FOOTBRIDGE PATH – the proposal is to divert DRGHKL to DQL

41. This is relatively straightforward. I consider that the diversion is in the interests of the landowner (they will not have to remove the vehicular bridge or make other provision for the path), and possibly in the interests of the public, given that the reason for the vehicular bridge is environmental protection – a public good. It would be self-defeating to require the bridge to be removed, and not good use of public funds.
42. The proposed route is no less convenient, there appears to be no impact on enjoyment, there is no effect on the land or other land (it is all within the same ownership and the landowner supports the change), and being ‘mid-path’ as such, the terminations are not changing – or if we look strictly at the numbering, the termination is changing from point H to L which is as convenient to the public.
43. I therefore have no hesitation in recommending a diversion of the footbridge path – which is supported by all involved and consultees.

FORD PATH – the proposal is to divert BCSEFK to BTSRQ

44. The problem here is that the starting point is that the definitive line is not within the ford, but just to one side. So the only way to rectify the situation as the landowner requests is a diversion order, moving the definitive line into the ford. There is a secondary option – that of a Definitive Map Modification Order [DMMO] to ‘correct’ the definitive line. However, we do also have to be aware that the general consensus is that the ford footpath did indeed run through the ford, and the slight misalignment is merely a mapping issue. So, every possible combination has to be discussed.

Modification of the mapping error

45. At first sight it would seem as though it could be relatively easy to correct the definitive map, as the statement says that the footpath went through the ford. However, when considering a modification order ALL the evidence has to be taken into account. We would be required to look at the situation pertaining when the error was first made, or when the path was first shown on the definitive map – which is either 1953 (Cumberland) or 1976 (Cumbria).
46. The landowner makes the point a number of times that they are keen to preserve the historical integrity, cultural heritage and is keen that the result of these processes is that the historical rights of way are recognised.
47. There is no problem with the principle of this.
48. However – the documentation earlier shows that the true historical right of way ran, not through the ford, but over a bridge downstream of the ford. The test for modifications is the 'balance of probabilities'. So, the question is: 'Where was it more probable that the right of way claimed ran'? And the answer is more likely to be 'over the old bridge site' rather than 'through a ford which often can't be used' – and the Ramblers' 1952 claim clearly states they were claiming the path over the missing bridge site. In which case, that's where we'd have to move the mapped Right of Way to.
49. If such a DMMO was successful then the resultant definitive footpath would be obstructed by the southern end of the new vehicle bridge and the lack of a footbridge west of the ford. We'd then have to either resolve these obstructions - or do another diversion order.
50. If we did take the view that in 1953 / 1976 there was no vehicular bridge and a DMMO would realign the path so it went through the ford instead of just to the east of it (which I can't see is a legally justifiable DMMO) – then this would replace BCS with something like BTSR and then turn 130° towards K and on to L, as R is the top of the ramp out of the ford (the ford hasn't 'moved', mapping has changed).
51. This would resolve the bit through the river – but would then leave R-K-L obstructed by part of the new bridge ramps – and we'd need to a diversion to put the path as R-Q. A further process – making three in all.

Diversion into the ford

52. So, if the starting point is that the path is BC and we wish to divert it to TQ, or alternatively, following a modification order the path is downstream of the ford, and we wish to divert it to TQ – the normal grounds and tests for a diversion have to be applied.
53. There is little doubt that diverting a path from a route that would (in theory) involve clambering down steep banks to a route that is a well-established ford with ramps would be of benefit to the public. It could also be argued that replacing a route that cannot be used with a route that cannot be used easily most of the time but can be when water levels are low is more convenient. So, it would seem as though the relevant grounds and tests may be met.
54. However, the question is whether we consider it ‘expedient to divert the path’, and this brings in wider issues, such as our own policies (Annex 1), and the potential impact of doing this.
55. Such a diversion, when published, would almost certainly receive objections on the basis that the ford is not fully usable by the public on foot, so we shouldn't be putting a footpath through it (or in other words: it is not at all convenient, doesn't meet modern standards or the requirements of the Equality Act and so on).
56. When we are diverting a path we are effectively extinguishing the old path and creating a new path (the two elements of the diversion order). There is a legislatively required clause in diversion orders that prevents the old line being extinguished until any works required to bring the new line into a path fit for use as a footpath have been completed. This is in s119 (3) which says “*Where it appears to the council that work requires to be done to bring the new site of the footpath into a fit condition for use by the public.....[certification date and extinguishment data]*”
57. The key phrase here is ‘fit condition for use by the public. And this is generally defined as in a condition fit for the ordinary traffic of neighbourhood (i.e.: walkers).

58. It is hard to argue that a wide ford, not very usable for most of the time by most people is in a fit condition for use – except in limited circumstances. A public footpath through a deep ford, would fail the ‘ease of use’ test.
59. We could adopt a position that a ford of this nature is perfectly suitable for a new public footpath. But in my view we would be unlikely to persuade a Planning Inspector that we need to create a footpath to enable such a limited use to happen.
60. In essence, we may be required to bring the path into a fit condition for use for the ordinary traffic of the neighbourhood (walkers) before the order is confirmed / comes into effect.
61. So how could we do this? Basically, we would be looking at building a third bridge or paving the ford and making it shallower.
62. Paving the ford will likely be opposed by the various environmental bodies, and a third bridge would basically be a difficult to justify.
63. We have already discussed the issue of the historical line, and it might be considered that as the path possibly goes through the ford already, we don't need to do anything - but diversions don't work that way. If we wish to rely on that argument, then we need to do a modification order – which is explained above. That is – it cannot be simultaneously be argued that we need to do a diversion order to show the path going through the ford, but that we don't need to do anything to make the diversion route usable because the evidence shows it really went through the ford anyway, so the public claimed it in that condition (although, as we have seen – the evidence doesn't show it did go through the ford anyway).
64. Nor can we really argue that its fine, a ford is okay because hardly anyone (if anyone at all) will actually use the ford footpath - as we will, by then, have identified a public need (and use) for it.
65. Expediency is really a combination of all the above. Do we consider it expedient (appropriate) to divert a right of way from a route that can't be used, onto another route that can only be used in certain conditions, and realistically

can't be made fully usable without huge financial and time input - when there is another footpath 10m away on a footbridge?

66. And is it 'Best Value' to do this?
67. As this would be a diversion – we also have to take into account the balance between environmental obligations and public access. The landowner makes comments around this aspect, which should be considered – but we do have to bear in mind the Sandford Principle.
68. As part of a public path order process, we firstly have to show that there is a need for the path that is being diverted (as above – there are two elements, one being a creation element – or 'need'). We are also obliged to take into account the impact on landscape, 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. All local authorities now have a duty to 'seek to further' the purposes of the National Park in their actions.
69. Our purposes are:
 - conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas designated.
 - promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.
70. And where there is irreconcilable conflict between the two – the first takes precedence (the Sandford Principle). In essence, the decision revolves around whether a need to divert the footpath to / through the ford (second purpose) is compatible with, or outweighs, the concerns raised by Natural England and the Environment Agency (first purpose).
71. The level of highway need for the footpath appears to be low, and given this, it is difficult to conclude that the need for the path is so great that it outweighs the environmental concerns that have been raised to the degree that it is expedient to divert the footpath and create a footpath through a ford.

FORD PATH – extinguish ABCSEFK or ABTSEFK

72. Wherever the right of way actually is – whether as shown on the definitive map (BC) or as on the ground (BTS), the ground for extinguishment is: *Where it appears to a council as respects a footpath in their area that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use.* And to determine this, we should look at *the extent to which it appears that the path or way would, apart from the order, be likely to be used by the public, and the effect the extinguishment would have on the land crossed by the path.*
73. The second part of that is easy – there is no identified impact on the land crossed by the path.
74. The first question has in effect been discussed above. None of our consultees have identified that there would be anyone likely to be using the ford path in the future. The landowner wishes the path to remain for a number of appreciable reasons, but even they have not provided any information about past usage (since the bridge was built) or identified future potential users.
75. The landowner correctly states that: *“The consultation responses are primarily concerned with whether the public highway through the ford should continue to exist. They are not directed towards the existence of the ford itself”.* And goes on to accept that *“The proposal appears instead to proceed from the understandable conclusion that, because the bridge now exists, the historic public highway has become less necessary”.* This is precisely the relevant highway test.
76. None of our consultees have come back to us saying that they have identified a body of the public that would wish to use a path through the ford – indeed, they have said the opposite.
77. One consultee did state that they consider it could be required if the footbridge collapsed at some point in the future – as there would be a ready-made cost-free alternative crossing. This is so, but we do have the ability to make temporary diversion orders to move the bridge path until the bridge is replaced anyway. And the current bridge was constructed to a greater / higher

standard than strictly necessary, precisely to withstand future predictable flood events. So the likelihood of this happening is low.

78. Consequently, it is difficult to see that there is a highway need for a public footpath through a ford, when there is a perfectly good bridge alongside it. This answers the 'no public highway need' question.
79. It is then a question of whether we consider it expedient to extinguish the path, and this is where the other factors come into play. The landowner says: *"In my view, the historical, cultural and recreational significance of this public highway has not been shown to be outweighed by the evidence presented in support of its removal."* I recommend that their responses (Annex 3) are read in full to see the points being made.
80. I appreciate the landowner's views on the ability to appreciate the historical and cultural significance of the ford. But I would point out that the ford itself will still be there and can still be observed from the footbridge – it is not being physically removed.
81. The cultural significance of it being part of the historical footpath is also greatly diminished by the fact that the original footpath was over a bridge, and the ford has seemingly only been in sole use whilst a bridge was missing for 55 years of the 140+ years the footpath has existed. It's four distinct eras:
- 1880s-1935 (c55 years) - bridge downstream of ford
 - 1935-1952 – no bridge, unknown if ford used as no public right of way shown / mapped – in 1952 the public footpath was claimed over the old bridge (not through the ford)
 - 1952 -c1990 (c40 years) – ford whilst bridge was missing
 - c1990-present (c35 years) – bridge upstream of ford
82. With regard to enjoyment and appreciation of the ford in its setting - I would also point out that interest and attractiveness in using the ford is probably not the same as 30-50 years ago – now being enclosed by two large metal bridges, barbed wire fences and gates and so on. That is, it's unlikely many walkers are going to go there today just to enjoy the ford and its history in its setting.

Other Considerations Required by Legislation

- 83. 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). This type of proposal is not really one that features in a ROWIP.
- 84. Limited Mobility - We have a duty to audit the proposals with regard to limited mobility. The proposed diverted path is no less available for those users with limited mobility who can reach the site, and the proposed extinguishment will not reduce accessibility.
- 85. There is no identified impact on the needs of agriculture and forestry - assessment required under schedule 6, Countryside & Rights of Way Act 2000.
- 86. Impacts on Outstanding Universal Values – There do not appear to be any major impacts on the OUVs of the Lake District World Heritage site, but this aspect is discussed above – it's the heart of the landowner's views.

Summary

- 87. The diversion of the footbridge path is supported by all, and we should proceed with this.
- 88. The extinguishment of the ford footpath is supported (or not opposed) by all, except the landowner.
- 89. No-one has shown that there is any identified public desire to use both of two highways alongside each other – and in my view there is a good case that there is in fact no need for one of them. Although the landowner's concerns around the heritage are valid, I consider that any cultural and historical significance, and interest / enjoyment in using a ford here is diminished by the historical evidence and by the current situation on site. And the ford itself will not be removed and can still be observed. What will be lost is the ability to wade through the ford and enjoy the heritage and cultural aspects of doing so. I do not consider that in this location these aspects are hugely significant today. And consequently, it would be expedient to extinguish this path