

Annex 3 – Consultation Responses

Initial Consultation

Open Spaces Society

Whilst there may be some cultural / historical value in retaining this route we are not fully convinced there is a need for the route over the ford. This is because of the variability of the river level, especially more so in future when the Ennerdale weir is removed; the potential, albeit slight, impact on the population of the pearl mussels; and the lack of demand given the adjoining route over the footbridge.

Natural England

FWPM are critically endangered in Great Britain (red listing based on IUCN guidelines). They are also a species of principal importance under the NERC Act 2006 and therefore need to be taken into consideration by a public body when performing any of its functions with a view to conserving biodiversity.

They are also protected under the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017. This legislation variously gives them protections against intentional disturbance, damage and destruction, and protects them and their habitat as a Special Area of Conservation (SAC).

I'm not aware that Natural England holds any particular study on the impact of walkers on pearl mussels, however, due to their protection under the Habitats Regulations we would have to presume the risk of the following impacts, should the ford be utilised as a designated footpath:

- Direct trampling of pearl mussels leading to injury or death
- Suspension of sediments by walkers leading to localised smothering of mussel beds
- Walkers spreading non-native invasive species through fragments or seeds on boots and clothing, impacting the condition of mussel habitat

Although the impact from walkers would be lesser in scale than agricultural vehicles and stock, any negative impact should be avoided where it is feasible to

do so. Given that there is an acceptable footpath provision over the adjacent footbridge, Natural England would not be in favour of reinstating the ford crossing without sufficient evidence that impacts could be mitigated.

We asked them what sort of 'mitigation' they had in mind. Their response was as follows:

We would be looking for whether the ford could be utilised in such a way that would not cause significant impact on the mussels.

Our main concerns are physical damage, siltation of mussel beds, and introduction of invasive non-native species (INNS). Having additional data about proximity of mussel beds to the ford would be useful to know whether direct damage is likely, however, mussel distribution can change over time or following significant weather events. This data would also not mitigate against the risk of INNS introductions, nor siltation. These could be mitigated by the inclusion of stepping stones to the ford, however, this could represent a loss of available mussel habitat. If you wish to suggest other possible mitigations, you can do so, and we will consider them.

Considering this, it's difficult to see a situation with the ford in use where risk to the mussels is acceptable. As there is an alternative footpath in close proximity, it seems that avoidance of impacts is feasible; there is a solution already in place. Therefore, this would be Natural England's favoured position.

Environment Agency

It sounds as if a FRAP is not likely to be needed but I just thought I should provide a bit of additional information. Apparently, salmon have previously been seen to spawn on this ford and there are freshwater pearl mussels in the vicinity. I believe Gavin Measures (NE) has been involved at this location previously and might have the previous FWPM survey – though the FWPMs could have moved / spread since then.

I believe this ford is natural bed (apart from any historic regrade / compaction from farm machinery – and concrete or stone on the assess/egress). I would assume that as it is no longer used it should naturalise further over time and become potentially improved habitat for salmon / FWPMs. Is it not possible to simply close these footpaths as I understood that was the point of the bridges (& associated grants) and possibly even part of the Habitats Regulations Assessment for the bridge? (Sorry I can't confirm this – it's just a vague memory).

Salmon redds will only be present something like November to March (whole spawning season from potential start to end considered as 1st Oct to 15th June) and so during periods when the water will often be deeper and less accessible, but the FWPMs would be present all year around (if on the immediate path) – though I think maybe nearer the surface / more vulnerable to trampling in summer. I think XXXX could provide more robust information on this (PS This note is not aimed at keeping the footpath where it is as this is still across the riverbed).

West Cumbria Rivers Trust

Obviously we're not an authority, so can only inform. But for info, we've undertaken surveys in this area previously and mussels have been found in the ford crossing. As Liz mentioned, they also could be present year-round, therefore I don't believe there would be any less risk of disturbance at any specific time.

Cumberland Council

No objections but made the comment that if the ford is now wholly redundant due to the convenience offered by the bridge, then it would seem more prudent to extinguish the path through the ford.

Friends of the Lake District

I think my view would be well as there's a bridge, perhaps there isn't a need [for the footpath through the ford] day to day, but in reality, I wouldn't have thought many will wade through the river when there is a footbridge.

If the bridge were to be damaged again, there could be benefit in retaining a legal ford route as a ready-made alternative legal route but then if there was such flood

water it might not be ideal to encourage that then either...the heritage value of maintaining the ford crossing too.

If the ford route was a bridleway, that would be different again.

Ennerdale & Kinniside Parish Council

The Council looked at the proposal and offered no comments regarding the diversion of the path.

Landowner

I am writing in response to the proposal to correct the Definitive Map regarding Public Footpaths 407043 and 407059 at Longmoor Head.

I am the owner of Longmoor Head and the land on which the routes in question are situated. I agree that where inaccuracies exist within the Definitive Map and associated records, they should be corrected in the interests of maintaining an accurate public record.

Having reviewed the consultation material and historical information available, I would make the following comments.

Historical Mapping and Route Alignment

Historical mapping and records demonstrate longstanding inconsistencies regarding the alignment of the footpaths in this location. In particular, it is accepted that the original footbridge was historically located to the west of the ford. It is therefore difficult to reconcile how the later replacement footbridge came to be installed to the east of the ford without any corresponding historical creation record existing at that time.

The subsequent need for a formal creation agreement in 2012 reinforces that the route and associated mapping had not previously been fully legally regularised. It is also notable that committee documentation referred to the replacement footbridge being installed approximately 10 metres upstream of the ford, whereas the bridge as constructed lies approximately 3 metres east of the ford. This

discrepancy itself demonstrates that the historic records and plotted alignments in this location have not always been precise.

Earlier mapping, of Footpath 407043 shows the route following the riverbank alignment and ascending to the top of the ford ramp. The current proposal appears to arise because the mapped route moved away from the immediate riverside alignment at some stage, yet there appears to be no surviving legal record formally documenting when or how that alteration occurred.

The accepted discrepancy in the ford location should not be viewed in isolation. It may indicate wider inaccuracies affecting the Definitive Map in this locality. The current assertion that the vehicular bridge obstructs both footpaths is therefore heavily dependent upon the accuracy of the plotted Definitive Map alignment itself. In my view, the evidence demonstrates that the present exercise is substantially one of reconciling historic mapping inconsistencies and long-established walked routes with the Definitive Record, rather than solely a matter arising from the later construction of the vehicular bridge.

The Authority's own correspondence also indicates that the currently plotted Definitive Line is derived from "working copy" GIS mapping compiled from multiple historic documents and records, rather than from a single surveyed alignment. In addition, the Authority's Ranger acknowledged that the ford crossing had remained physically in the same place "for a fair while", whilst also noting that it was "not on the DL". Taken together, this suggests that part of the present issue may arise from historical transfer, interpretation, or digitisation discrepancies between older paper records and modern GIS mapping, rather than solely from more recent physical alterations on the ground.

Further inconsistencies are also evident within Cumberland Council's Definitive Rights of Way mapping. The mapping currently shows the footpath entering the River Ehen approximately 60 metres from the footbridge, with parts of the crossing beginning within the river itself. The ford crossing is then shown travelling westwards within the river channel before exiting some distance later. This differs materially from both the historic physical use of the crossing and the alignments

referred to elsewhere within the Definitive Record and associated documentation. Taken together, these inconsistencies demonstrate that mapping discrepancies are not confined to a single point location but instead affect the wider interpretation of the route network in this area. In my view, this further supports the need for the Definitive Record to be comprehensively reconciled against the historical evidence, physical features, and long-established walked routes so that an accurate and reliable public record is maintained for the future.

Cumberland Definitive Map Link

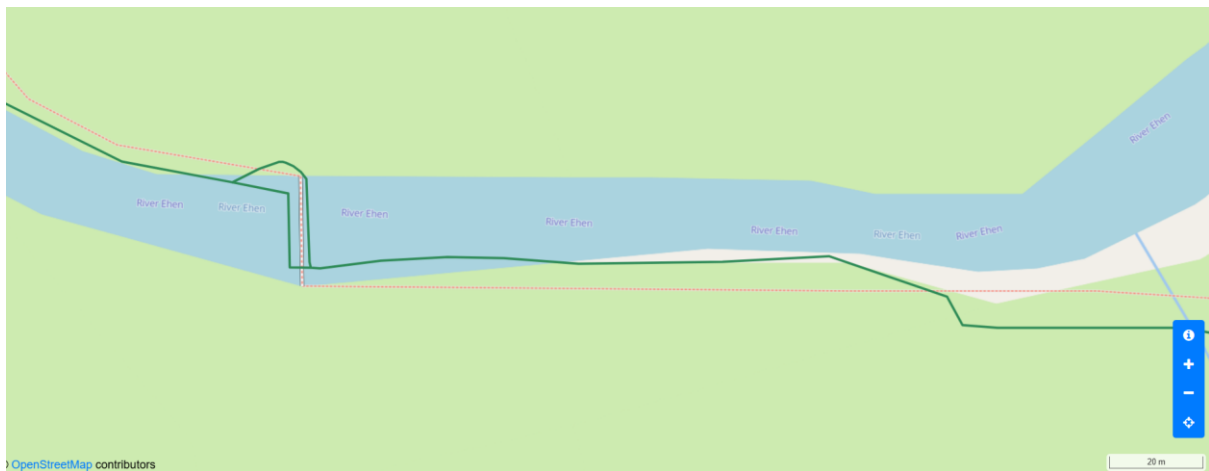


Figure 1 Cumberland Definitive Map Extract

Information obtained from Ordnance Survey mapping records (Master Map) demonstrates that the ford crossing remained identified on mapping up until approximately 1994. From around 2004 onwards, the ford is no longer shown and is instead replaced by the footbridge crossing. Whilst Ordnance Survey mapping does not itself constitute the Definitive Map or legal record of Public Rights of Way; it is intended to reflect physical access routes and features existing on the ground at the time of survey. It is therefore notable that Ordnance Survey have confirmed they hold no record of any formal amendment or instruction which would explain the removal of the ford crossing and its replacement with the footbridge alignment. This further supports the position that changes to the mapped routes in this location have occurred inconsistently over time and without a clear corresponding legal or documentary record.

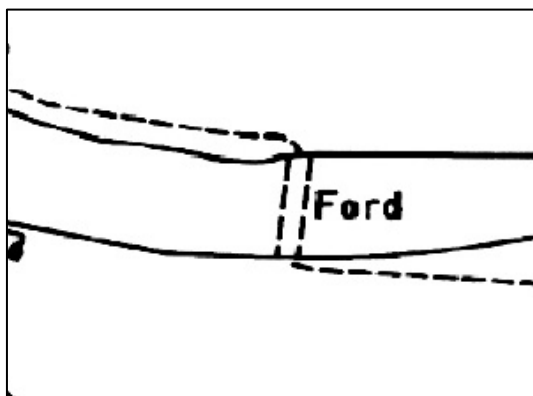


Figure 2 2004 OS Master Mapping Extract

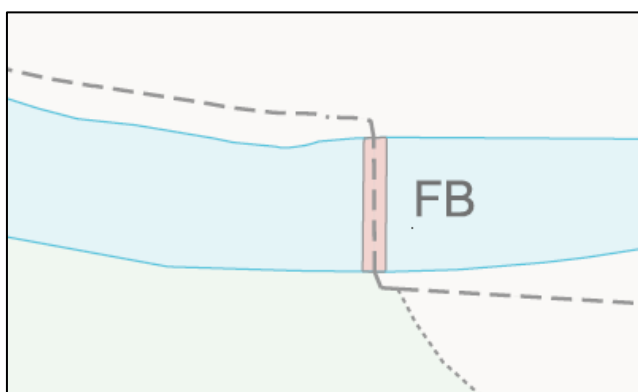


Figure 3 1994 OS Master Map Extract

Planning, Authorisation and Regulatory Oversight

Prior to installation of the vehicular bridge, the proposal progressed through multiple layers of governance, regulatory review, assurance, and formal authorisation involving the Lake District National Park Authority, the Environment Agency, and Natural England.

The Notification of Intention process included detailed consultation, surveys, site visits, technical assessments, method statements, risk assessments, and extensive correspondence in order to address matters raised by the respective authorities throughout the assessment period.

The proposal was also subject to Habitats Regulations Assessment considerations, reflecting the environmental sensitivity of the River Ehen and surrounding area. Following completion of the required assessments and submission of the supporting documentation, authorisation to proceed was

ultimately issued through the Head of Planning, with subsequent approvals and consents also provided by the Environment Agency following completion of the required post-planning surveys and documentation.

As part of the process, Public Rights of Way in the vicinity of the development were acknowledged and considered through the Authority's own procedures, consultations, and checklists. The proposal and associated works were openly disclosed throughout the Notification of Intention process, with extensive correspondence taking place between the Lake District National Park Authority and myself. Despite the detailed consultation and numerous exchanges during that period, no comments, concerns, objections, or requirements relating to the alignment or obstruction of Public Rights of Way were raised by the Authority. The footbridge itself was subsequently installed in the location authorised through those processes.

During construction of the vehicular bridge, officers of the Lake District National Park Authority attended site to review the installation and undertake compliance observations. No concerns or discrepancies relating to the alignment or obstruction of Public Rights of Way were identified at that time.

It is also relevant that the vehicular bridge had been completed and in place for approximately three years before the present concerns regarding the alignment of the Public Rights of Way were formally raised. During that period, the bridge and associated routes remained openly visible and in regular use, with no concerns, enforcement issues, or alignment discrepancies being identified or communicated by the relevant authorities.

Historical committee records further demonstrate that the Rights of Way Committee had previously considered this location and authorised a combination of creation and diversion mechanisms associated with Footpath 407043.

Footpath 407059

The public has naturally chosen to walk the route identified as D–J–L, and I have no objection to this alignment.

The original fence-line route, which reflected the historically trodden path prior to construction of the vehicular bridge, has also remained physically available and unrestricted. This may also be a relevant alternative to D-J-L when assessing the historical use of routes within this location.

Footpath 407043

I accept that the Definitive Record should be corrected to accurately reflect the ford crossing through the river and the route ascending the ford ramp to connect with Footpath 407043.

This would align with earlier Ordnance Survey mapping, which shows the footpath leaving the ford by the ramp and turning east at the top of the ramp, rather than by the presently plotted line.

Summary

In summary, I support the correction of the Definitive Record where evidence demonstrates inaccuracies. However, I consider it important that the historical context is properly recognised, including the longstanding inconsistencies in mapping, the Authority's own role in authorising and managing route changes in this location, the evolving nature of the physically used routes over many years, and the apparent discrepancies between historic records, mapped alignments, and modern GIS representations. In my view, the present exercise should therefore be approached as a comprehensive reconciliation of the historical and physical record, so that an accurate and reliable Definitive Record is maintained for the future.

I remain willing to work constructively with the Authority to ensure that the Definitive Record accurately reflects the historical evidence, the physical characteristics of the site, and the routes that have historically existed and been used on the ground.

Secondary Consultation

Open Spaces Society

We are unaware of anyone using the ford as a walking route since the footbridge was installed.

It is unlikely that most members, not least those of a senior age, would want to have wet feet whilst on a walk when there is a sensible alternative. The only possible potential future use of the ford might be from people who want to access the river bank (e.g. dog walkers, or people interested in the natural history of the River Ehen) but not necessarily to cross the river. However, there are alternative sites for such activities, and we believe the balance for the protection of the river life, especially the pearl mussels, should be paramount in this particular case. The OSS would not therefore object to the proposal you detail in this last email.

Natural England

We think the use of the ford on foot is likely to be low, considering that the alternative footbridge provides safe, dry passage in all conditions, including in bad weather and when water levels are high. It is also more accessible, for example, for people of limited mobility. We consider that, were the general public made aware of the importance of the protected habitat and species in this location, we think they would be more inclined to use the alternative footbridge, in order to protect the natural heritage of the site.

Environment Agency

The Partnerships & Strategic Overview Environment Agency team do not have any further comments as we have no flood risk concerns.

No additional comments from our Fisheries, Biodiversity and Geomorphology Team except to note that if the ford is retained as a public highway and needs maintenance in the future it is likely to need a Flood Risk Activity Permit and would require surveys/constraints associated with freshwater pearl mussels and fish (including salmon) and an assessment under the Habitats Regulations.

[No relevant information provided on past/future usage]

West Cumbria Rivers Trust

No response

Cumberland Council

No response

Friends of the Lake District

I don't think we really have anything to add to this and without doing a special member survey, it would be difficult to provide firm data. However, we consider the likelihood to be minimal of any more than minimal numbers of the wider public using the route and also choosing the ford as opposed to the footbridge.

LDNPA Member (LDNPA officer response in italics)

One question, if the bridge became not capable of use would the loss of the ford as proposed mean there was no public access to the other side of the river. Is the ford right of way not worth keeping for that reason?

If the bridge became unusable, then we would have a legal obligation to repair / replace it. Same as every other bridge really.

Which means there might be no right of way for a long time, such as memorial bridge. In a circumstance where there is an alternative albeit in this case a ford why loose it, keeping it costs nothing.

If the bridge collapsed and was not immediately replaced, then we could do a temporary closure / diversion order to put the path back temporarily through the ford if that was required. However, the footbridge has been built specifically to withstand highly extreme flood events, that's what the funding enabled us to do (indeed, required us to do) – the previous bridge was vandalised rather than being damaged by floodwater.

The question of whether it 'costs nothing', and the overall expediency is something that the Rights of Way Committee of the LDNPA will consider in due course – with a full report setting out all the various options and issues, together

with all the consultation responses. One issue (as made clear in the previous consultation) is that the actual mapped right of way does not currently run through the ford, but just to one side – so we would be having to divert (create) the mapped route so that it runs through the ford. That has a higher requirement to just leaving something where it is. We do also have to maintain the steps and rails down from the footbridge – which isn't onerous, but isn't entirely cost-free. And of course, we are not actually 'taking away the ford' – it will still be there on the ground.

With regard to Memorial Bridge – there is still a public right of way there, just as there was for many decades before the bridge was built. The right of way is exercisable by way of walking through the river. That same as it would be in any other situation where there is no bridge – it would be up to the individual user to make a decision as to whether they wished to do this. The bridge itself is not the public right of way, it is merely the physical manifestation helping people to use the incorporeal entity.

Yes, I have used the ford to cross the river, that was linked to training a young dog. It is unlikely that I would use it again in the foreseeable future. I do not consider it likely that the public would use the ford, I don't recall having seen members of the public using the ford.

Ennerdale & Kinniside Parish Council

In answer to the three key questions -

- Have we used the ford? - No
- Are we likely to use the ford? - No
- Do we think the public are likely to use the ford? - We are not aware of people using the ford, but cannot speak for everybody, so you would need to consult with the public (which I'm sure is the next step in your process anyway).

Landowner

I appreciate the time taken by the Authority to consider the historical evidence alongside the physical circumstances on the ground. I also welcome the acknowledgement that the objective should be to ensure that the Definitive Map and Statement accurately reflect the historical evidence and the route available to the public, thereby providing a reliable record for future generations.

Having carefully considered both your letter and the consultation responses, I offer the following observations.

Historical Mapping and Route Alignment

I continue to support the correction of inaccuracies within the Definitive Map where they are demonstrated by the available historical evidence.

The documentary record, historical mapping, aerial photography and physical evidence all demonstrate that inconsistencies have developed over many years, particularly following the construction of the pedestrian footbridge and, subsequently, the vehicular bridge.

Correcting those inconsistencies is in the interests of both the Authority and the public.

The proposal to record the public route over the footbridge and around the northern side of the vehicular bridge reflects the route currently available and used by the public and appears to provide an accurate record of the position on the ground.

I therefore remain supportive of correcting the alignment of Footpath 407059 to ensure that the Definitive Map properly reflects the lawful route available to users.

Consultation Responses

I welcome the time and expertise given by Natural England, the Environment Agency, Cumberland Council, the Open Spaces Society, Friends of the Lake District and the West Cumbria Rivers Trust in considering the proposal.

Their responses rightly emphasise the importance of protecting the River Ehen as a Site of Special Scientific Interest and Special Area of Conservation, and I fully recognise the exceptional ecological importance of the river, particularly in relation to freshwater pearl mussels and Atlantic salmon.

However, I believe it is important that these consultation responses are considered alongside the wider historical, cultural and recreational context.

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.

This distinction is important.

The proposal concerns the extinguishment of a historic public highway, not the removal of the ford as a physical feature within the landscape.

Freshwater Pearl Mussels and Ecological Considerations

Natural England's consultation response appropriately adopts a precautionary approach consistent with its statutory duties. However, precaution alone does not necessarily demonstrate that extinguishment of this particular historic highway is required.

However, I also note that Natural England acknowledges it is **not aware of any specific study examining the impact of pedestrian use of this ford**, and therefore adopts a precautionary position rather than one founded upon demonstrated site-specific evidence.

Similarly, the consultation responses refer to freshwater pearl mussels being "in the vicinity" of the ford or potentially within the crossing itself.

It is my understanding that surveys undertaken prior to construction of the vehicular bridge did not identify established freshwater pearl mussel beds within the actual ford crossing, although colonies were recorded elsewhere within the River Ehen. If that is now considered to be the case, it would assist the public record if the evidence supporting that conclusion were made available, particularly as Natural England itself recognises that mussel distribution may alter over time following significant weather events.

This distinction is important when considering whether extinguishment of a long-established public highway represents a proportionate response.

Historical Context

The ford is not a recent feature created for modern recreation. Historical mapping demonstrates that it has existed and been used for generations, long before the River Ehen received its present environmental designations.

During much of that period, freshwater pearl mussel populations within the River Ehen were considerably healthier than they are today.

The long historical coexistence of the ford with healthy freshwater pearl mussel populations suggests that careful consideration should be given to whether occasional pedestrian use of this historic crossing is, in itself, a significant factor affecting the conservation status of the species.

Equally, consideration should be given to the wider pressures affecting the River Ehen catchment, including water quality, sedimentation, sewerage pollution, invasive non-native species, river engineering, climate change and catchment-wide management.

Those factors are widely recognised as contributing to the decline of freshwater pearl mussels nationally and appear likely to have a significantly greater influence upon the River Ehen than the continued existence of a historic public footpath. Indeed, the River Ehen has previously experienced significant environmental pressures arising from altered river flows and water management. Following freshwater pearl mussel mortality in 2012, the Environment Agency served United Utilities with a formal Environmental Damage Regulations notice requiring increased compensatory flows. That history demonstrates that the principal pressures affecting the River Ehen have arisen at a catchment scale rather than from the occasional use of this historic ford.

The consultation responses also refer to the proposed removal of Ennerdale Weir and the potential future variability of river levels. Whilst this is clearly a relevant consideration, in my view it would be premature to rely upon potential future changes arising from the removal of the weir as justification for extinguishing this particular public highway. Any hydrological changes would affect the River Ehen as a whole, together with all associated habitats and recreational activities throughout the catchment, rather than this historic crossing alone.

National Park Purposes and UNESCO World Heritage Site

The consultation responses understandably place considerable emphasis upon biodiversity.

However, the statutory purposes of the National Park require equal regard to be given to conserving and enhancing the cultural heritage of the area whilst promoting opportunities for the understanding and enjoyment of its special qualities by the public.

Similarly, the Outstanding Universal Value of the Lake District UNESCO World Heritage Site recognises an evolving cultural landscape shaped through the continuing interaction between people, farming and the natural environment. Historic fords, drove routes and river crossings form part of that cultural landscape.

They contribute to public understanding of the history of settlement, agriculture and movement through this landscape in a way that cannot be replicated by modern infrastructure alone.

Whilst there is now an alternative bridge crossing, the historical significance of the ford remains unchanged and, in my view, deserves greater weight than is presently reflected within the consultation responses.

Public Enjoyment

The proposal would extinguish a public highway rather than remove public interaction with the River Ehen.

Members of the public will continue to enjoy the river and wider catchment through walking, wildlife observation, paddlesports, swimming and other recreational activities consistent with the purposes of the National Park.

The bridge provides an alternative means of crossing the river.

It does not provide the same opportunity to experience and appreciate the historic ford as part of the cultural landscape.

Accordingly, I question whether extinguishing the public highway materially advances the second statutory purpose of the National Park, namely promoting public understanding and enjoyment of its special qualities.

Necessity and Proportionality

The consultation responses repeatedly refer to the existence of an alternative bridge crossing.

I fully accept that the bridge now provides a convenient means for the public to cross the River Ehen.

However, convenience is not, of itself, the statutory test for extinguishment.

Section 118 of the Highways Act 1980 requires the Authority to be satisfied that

the path is not needed for public use. Whilst the existence of an alternative route is a relevant consideration, it does not, of itself, demonstrate that a public right of way is no longer needed.

The question is whether the historic public highway is **no longer needed for public use**.

The existence of a nearby bridge undoubtedly reduces the practical necessity for the ford crossing, but I do not believe that this alone demonstrates that the historic public right of way is no longer needed.

Nor do I consider that the consultation responses establish that extinguishing the public highway would deliver a demonstrable ecological benefit proportionate to the permanent loss of a historic route.

The proposal appears instead to proceed from the understandable conclusion that, because the bridge now exists, the historic public highway has become less necessary.

Whilst that may be a relevant consideration, I respectfully suggest that it is not sufficient in itself to justify extinguishing a route that has formed part of the landscape for generations, particularly where the ecological case remains precautionary rather than founded upon site-specific evidence.

Conclusion

Having reviewed the historical evidence, consultation responses and the physical circumstances on the ground, I remain supportive of correcting the Definitive Map so that it accurately records the route available to the public over the footbridge and around the vehicular bridge.

However, I do **not** support the proposed extinguishment of Footpath 407043 through the ford.

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 fully support the conservation objectives for the River Ehen and recognise the importance of protecting its internationally significant ecology. However, I remain unconvinced that extinguishing this historic public right of way will make a material contribution to those objectives, particularly when considered against the wider catchment-scale pressures affecting the river and the long history of coexistence between the ford and the river's ecology.

I therefore respectfully invite the Authority to proceed with correcting the Definitive Map where appropriate, whilst retaining the historic public highway through the ford unless and until compelling evidence demonstrates that its extinguishment is both necessary and proportionate in the wider public interest.

Thank you once again for the opportunity to comment, and I trust these observations will assist the Authority in reaching a balanced decision that reflects the historical evidence, statutory duties and the long-term public interest.