

**South Lakeland District Council
Cabinet**

Wednesday 3 February 2021

Public access - Council owned riverside land in Kendal

Portfolio:	Cllr Jonathan Brook – Portfolio holder for Housing and Innovation
Report from:	Simon Rowley – Director for Customer and Commercial Services
Report Author:	Sion Thomas – Operational Lead for Delivery and Commercial services.
Wards:	Kendal East, Kendal North, Kendal Rural, Kendal Town, Kendal West, Kendal South and Natland
Forward Plan:	Key Decision as published on the forward plan 18.12.20

1.0 Expected Outcome

To consider the use and management of Council owned riverside land with regard to the new Gooseholme Bridge and flood defences.

2.0 Recommendation

2.1 It is recommended that Cabinet:-

- (1) Approves the use of land on New Road and Gooseholme for the proposed Gooseholme/ New Road footbridge landings to be built including temporary works/restrictions, future maintenance of the structures and to delegate entering in to legal agreements to authorise such use with [Cumbria County Council/EA].**
- (2) Gives delegated authority for officers to commence a deregistration process for the land that the landings for the footbridge (noted above) are sited on, and the common land on which the flood defences will be sited.**
- (3) Approves that Beezon Fields and Ford Park (land adjacent to Natland Rd) be considered to the extent necessary as replacement land (in addition to the land on Aynam Road already approved) for deregistration of common land as noted in recommendation 2 above and recommendation 4 below.**
- (4) Approves that defined cycle routes across New Road and Gooseholme be de-registered for cycling – connecting to the new bridge.**
- (5) Gives officers authority to explore amendments to scheme of management and byelaws to allow for future maintenance of flood defences, footbridge structure and work in the river.**
- (6) Approves that consultation proceeds with regard to the deregistration process of part of New Road Common to ensure that those parts of the New Road Common can be used to accommodate the flood defences, such accommodation land being integral to the Kendal Flood Relief Management Scheme.**
- (7) Invites the County Council to submit a request for a contribution of £75,000 towards the project from the South Lakeland Community Infrastructure Levy.**

3.0 Background and Proposals

Background

- 3.1 In August 2017, the SLDC Cabinet took the decision to close New Road Common ("Common") to cars, the Common was closed to cars in September 2017. This was due to health and safety concerns highlighted in a Road Safety Audit and the Council being unable to remove the risks due to it being unlawful to undertake works which supported parking or driving on the Common. The Council sought Counsel advice who confirmed this to be the case.
- 3.2 The Council at the time of closing the Common committed to a landscaping scheme whilst a final decision was to be made over the long term vision for the Common.
- 3.3 Since the decision to close the Common to cars, the Council's decision to undertake a landscaping scheme, completing the landscaping project, and the undertaking of a Parish Poll, the Environment agency (EA) has sought and obtained planning and funding approval for the flood risk management scheme in Kendal, the largest infrastructure project in Kendal's history and Cumbria County Council (CCC) has sought and obtained planning, funding and s38 approval for the New Road/ Gooseholme footbridge which has a significant impact on the Common and forms part of the EA flood risk management scheme.

Deregistration

- 3.4 As part of the New Road/ Gooseholme footbridge, CCC requires the approval of SLDC to site the landings for the footbridge on SLDC land. The Planning Inspectorate has approved the scheme to build the landings on the Common and whilst the landings are significant, the landings ensure DDA compliant access across the river. It is therefore recommended that SLDC approve the siting of the landings on SLDC land to secure a key piece of infrastructure for the Town. Cumbria County Council considered submitting a Section 16 application to deregister the common land upon which the ramps would be built, but given that CCC has no viable alternate provision within their ownership, they opted to submit a Section 38 application to build upon Common Land. Adhering to the principles of 'a Common Purpose' a guidance document for the management of Common Land, the deregistration of the land would have been preferential. Due to the availability of an alternative provision and timeframes for project delivery this was not possible. The recommendation to amend both Gooseholme and New Road Common Land boundaries to address a number of historic issues gives the Council the opportunity to provide alternate Common Land to that which will be covered by the Gooseholme Bridge and to secure the Green river corridor from North to South Kendal. See Appendix 1 to show the area to be approved for the new footbridge landing areas).
- 3.5 Whilst the Council has given approval for all flood defence walls/ embankments to be built on Council land in the Cabinet meeting in December 2019 (See background report highlighted below), it is advisable that the land is de-registered as common land where the flood defence walls are sited, any embankments, pumping plant station and related infrastructure and the CCC New Road/ Gooseholme footbridge landing structure, to ensure that all structures can be maintained without formal approvals required by the Planning Inspectorate in the future. This is to aid the EA and CCC with timescales and the ability to react as and when needed. The EA are preparing two Section 38 common land applications for works on common land at Gooseholme and New Road. These applications will cover both the permanent flood defences, the temporary works during

construction and for future maintenance of the new flood defences and river channel. The EA have worked closely with CCC to ensure that there is a strategic fit between the EA flood defences and the new Gooseholme footbridge.

- 3.6 The EA would welcome the support of SLDC to de-register certain areas of common land, where there may be perceived issues. The EA have included future maintenance in their common land applications but again as a precautionary measure they would welcome amendments to the byelaws/scheme of management to include the future maintenance of flood defences including the river channel, such as gravel removal. Again, the de-registration process would provide alternate Common Land to that which will be covered by the flood defences.
- 3.7 Under common land legislation, the proposed deregistration of common land will require other council owned land to be offered as replacement common land. The replacement land will need to be considered as being of equivalent value for community and recreational use as the existing land. To create better value, the Council has the opportunity to consider a coordinated approach to the management of access and recreation alongside the River Kent throughout Kendal, realising its potential for exercise, recreation and enjoyment of its environment and habitats. The Council owns riverside open space alongside Aynam Road, Ford Park (land adjacent to Natland Road) and Beezon Fields. (see Appendix 1). By proposing the designation of these sites as replacement land, the area of registered common land will be greater than the existing, public access will be secured in perpetuity through common land designation, and through land management, opportunities can be realised to improve habitats, biodiversity and the public access and interpretation of the sites. Together, they will deliver a net positive gain.

Strategy and Policy context

- 3.8 The proposal for an enhanced footbridge with the scope to be upgraded to a cycle crossing and associated improvements to surrounding open spaces will be a major enhancement to the town's active travel network and a critical link between the town centre, the river corridor, rail and bus stations and employment and residential areas on the north eastern side of town. As such, it is strongly aligned with a number of SLDC strategic objectives set out in the Local Plan Core Strategy (Policy CS2) including:
- The regeneration of the Canal Head area
 - Supporting new housing and employment development with enhanced transport links;
 - Ensuring that development is (or can be made accessible) by walking, cycling and public transport from main residential areas, without any detrimental impact on the town centre network.
 - Improve and expand tourism and leisure opportunities in Kendal,
 - Implement the development and mitigation strategy proposed in the Kendal Transport Assessment, including continued and increased encouragement of sustainable travel,
 - Safeguarding and improve rail access and the existing railway station at Kendal.
 - Improving accessibility to and within the town centre for non-car users and those with mobility problems, including improvements to footpaths and cycle routes;
 - Improving local green infrastructure, including parks, green spaces and allotments.

- Ensure that new development safeguards and enhances the natural environment including the River Kent and its tributaries
- Minimising air pollution through implementation of Air Quality Management Plans;
- Minimising the risk of flooding.
- Promoting health and wellbeing;

3.9 The Council has a Community Infrastructure Levy (CIL) which is intended to fund infrastructure which supports the delivery of the Local Plan. The Council's Infrastructure Delivery Plan identifies transport improvements in Kendal Town Centre as an appropriate use for levy funding. Because of the very high level of alignment with the Local Plan, it is proposed that the Council give in-principle support for the proposed the New Road/Gooseholme footbridge structure and that the County Council be invited to make a request for £75,000 of CIL funding for the bridge. The contribution will ensure that the footbridge is to a high architectural standard and meets with the expectations of the Town who expect the very best in terms of design and place making.

Conclusion

3.10 Therefore, we seek approval for CCC to site the new Gooseholme/ New Road footbridge landings on SLDC land, approve the de-registration of land to accommodate the proposed footbridge, defined cycle routes and flood defence structures, propose that Beezon Fields/ Ford Park and land adjacent Aynam Road be approved for potential Common land replacement, that byelaws are reviewed to explore options for amendment (such amendments being approved through consultation) and that funding be earmarked from the CIL fund to help facilitate the Gooseholme bridge replacement.

4.0 Consultation

4.1 Consultation for the flood defences and proposed landscaping works through Kendal has been undertaken by the Environment Agency as part of the flood risk management scheme application.

4.2 Consultation for the New Road and Gooseholme footbridge has taken place with the public and with the Planning Inspectorate, Friends of the Lake District and Open Spaces Society.

4.3 A consultation on New Road when the Common was closed to vehicles was undertaken to show the public the proposals for the green open space. The original decision to close the Common was approved at Cabinet in August 2017, scrutinised at Overview and Scrutiny Committee in September 2017 and then the Capital scheme to implement the proposals for green open space was approved at Council in October 2017.

4.4 During the landscaping project, a Parish Poll was called to seek views from the parishioners on the Common being closed to vehicles and being landscaped. The result from the Parish Poll was 3:1 in favour of the landscaping scheme.

4.5 New Road Common Land forms an integral part of the Kendal Flood Relief Management Scheme in that part of the common land will be used to accommodate the flood defence walls, landings for the footbridge and flood gates.

4.6 Consultation will take place with the bodies/ persons noted below as part of the formal consultation required for the de-registration process. The Council will consider in what form the consultation will take in light of the Coronavirus pandemic.

- local residents and civic amenity groups
- other commoners whom you are reasonably able to identify
- others with an interest in the land,
- any relevant parish, district, city or county council
- Natural England (if your proposal might affect a site of special scientific interest)
- Historic England (if your proposal might affect a Scheduled Ancient Monument)
- Open Spaces Society
- other bodies with a specific interest in the land, for its flora or fauna (e.g. Wildlife Trusts, Local Access Forum)
- other bodies with an interest in access to the land (Ramblers' Association, British Horse Society, Cyclists' Touring Club, local walking and riding groups).

5.0 Alternative Options

5.1 To not approve the land for the footbridge landings to be built, to not de-register the land and to not support the footbridge financially. This is not advised when the footbridge provides a key piece of infrastructure in the Town. By de-registering the land for the footbridge landings and flood defence walls, it allows for maintenance works to take place on the structures in the future and the financial support allows for a more aesthetically pleasing structure to be installed.

6.0 Links to Council Priorities

6.1 Working across boundaries to deliver economic growth:

- working with our partners to deliver regional growth by attracting external funding and delivering critical infrastructure.

6.2 Responding to climate change and enhancing biodiversity:

- ensuring that new development is sustainable, energy efficient and flood resilient working with local communities to improve;
- manage and promote accessible public realm making the best use of our parks, open spaces and lakes;
- developing town centres which are attractive and accessible for living, working, culture and leisure;
- ensuring that business areas are protected from flooding conserving and enhancing the biodiversity of the District.

7.0 Implications

Financial, Resources and Procurement

7.1.1 The cost of consultation will be covered through the existing property services budget. Prior to any de-registration, officers will be required to report back to Cabinet to seek further approval and the expenditure relating to any associated cost of deregistration will be considered in the same report.

Human Resources

7.2 There are no Human Resource implications with this report to note.

Legal

7.3.1 Under the Commons Act 2006 the owner of common land can apply to the Secretary of State for the land to be released from the registration. Where an application is made to de-register an area of common land over 200sq metres, the application must include a proposal to register alternative land as common land. The alternative land is to be registered as common land in exchange for the release of the original land. When deciding whether to release the land from registration, the Secretary of State will consider:-

- The interests of those exercising rights over the land;
- The interests of the neighbourhood;
- Public interest (including but not limited to nature conservation, protection of public access to the land, conservation of the landscape and any other relevant factors).

Prior to making an application the Secretary of State expects extensive informal consultation to have been carried out. It recommends consulting with all bodies which will later need to be formally consulted as part of the application process.

The land offered in exchange for the release of the common land is to be as a minimum similar to that land to be released in terms of quality and quantity. This means land at Beezon Fields in particular would need to have its access to the public improved. Work is already earmarked by the EA to improve access.

7.3.2 Under a number of statutes, cycling on common land is considered unlawful (s193 of the law of Property Act 1925, S34 of the Road Traffic Act 1988 etc) and therefore the release of land from its registration of Common Land to accommodate a cycle route across Gooseholme and New Road is required.

7.3.3 Byelaws - The common land is subject to a scheme for its regulation and management dated 28 January 1910 and to Byelaws dated 15 October 1951 which set out various offences in respect of certain uses of the common. For example driving on common land is a criminal offence. These will need to be reviewed and explored in the context of Kendal Flood Relief Management Scheme to ensure that those structures can be repaired, replaced or maintained easily and without formal consents having to be made which could delay works from being carried out in a timely fashion.

7.3.4 What is being proposed now is for the de-registration of part of New Road Common to accommodate the flood defences and landings/footings for Gooseholme footbridge. This accommodation land is an integral part of the Kendal Flood Relief Management Scheme. The Council is required to carry out consultation as part of this process.

Health, Social, Economic and Environmental

7.4 Have you completed a Health, Social, Economic and Environmental Impact Assessment? Yes.

Equality and Diversity

7.5 Have you completed an Equality Impact Analysis? No. It is not felt that this analysis is required.

Risk

Risk	Consequence	Controls required
Public expectation that the Council would be consulting on the	The public think that this is the consultation that the Council referenced previously. When it is	This proposal relates only to part of New Rd and a consultation will be carried out in relation to those parts of New Rd affected

Risk	Consequence	Controls required
whole end use of New Road.	only intended to cover part of New Rd.	by matters outlined within the report.
Application not approved by the Planning Inspectorate.	Delay in the process which could put the EA scheme at risk if they fail to obtain Planning Inspectorate approval for the flood defence scheme.	Ensure legal advice sought prior to proceeding with de-registration of the land.
Legal Challenge from those who are against the proposal.	Delay in the process and lead to uncertainty around land holdings around the centre of Town.	Ensure legal advice sought prior to proceeding with de-registration of the land.

Contact Officers

Sion Thomas, Operational Lead for Delivery and Commercial Services, 01539 793192, sion.thomas@southlakeland.gov.uk

Appendices Attached to this Report

Appendix No.	Name of Appendix
1	Site Plan showing land to be de-registered.
2	New Road and Gooseholme Footbridge Demolition Planning Decision notice
3	New Road and Gooseholme Footbridge Planning Inspectorate Decision notice
4	Environment Agency Flood defence Planning Decision notice.
5	Health, Social, Economic and Environmental Impact Assessment

Background Documents Available

Name of Background document	Where it is available
Consent for replacement of trees and removal of trees on land owned and managed by the Council associated with the works to the Kendal Flood Risk Management Scheme.	https://democracy.southlakeland.gov.uk/documents/s27829/Consent%20to%20remove%20trees%20and%20provide%20replacements%20on%20land%20owned%20by%20the%20Council%20associated%20with%20the%20wo.pdf

Tracking Information

Signed off by	Date sent	Date Signed off
Legal Services	16.12.20	16.12.20
Section 151 Officer	16.12.20	19.01.20
Monitoring Officer	16.12.20	16.12.20
CMT	16.12.20	16.12.20

Circulated to	Date sent
Assistant Director	N/A

Circulated to	Date sent
Human Resources Manager	N/A
Communications Team	N/A
Leader	N/A
Committee Chairman	N/A
Portfolio Holder	05.01.20
Ward Councillor(s)	N/A
Committee	N/A
Executive (Cabinet)	N/A
Council	N/A