

The Highland Council

Agenda Item	4
Report No	DSA/08/24

Committee: Dingwall & Seaforth

Date: 20 May 2024

Report Title: The Peffery Way (Dingwall to Strathpeffer) Path Agreement/ Path Order Proposal

Report By: Assistant Chief Executive - Place

1 Purpose/Executive Summary

- 1.1 The Peffery Way is a community led path initiative between Strathpeffer and Dingwall. It aims to complete a safe off-road path suitable for all-abilities. This would be a very useful active travel route between the two towns and is fully supported by the Highland Council and both Community Councils. Almost half of the route is on the old railway track bed into Strathpeffer.
- 1.2 On one section, at Millnain Croft, Blairninich, the Peffery Way Association (PWA) and the landowner have not been able to reach agreement on progressing the route, which would provide the final connection in the Peffery Way. The PWA have asked The Highland Council to use their powers under the Land Reform (Scotland) Act 2003 to seek a Path Order to ensure completion of the route along the most desirable line.
- 1.3 The first part of the Path Order process is to confirm that a Path Agreement is not possible. In corresponding with the landowner an alternative route was proposed. This route is slightly longer, not direct, involves some gradient and would require more construction, although some of this can be reduced with modification. This route was not considered acceptable to the PWA. The Local Access Forum also advise that the railway track bed is the preferred option.
- 1.4 The Council may now decide whether to accept the proposed alternative route, with modification, and reach an Agreement with the landowner, or proceed with the Path Order process for the old railway track bed.

2 Recommendations

2.1 Members are asked to:-

- i. **Note** the two options available to the Council to enable the completion of the Peffery Way, which are:-
 - a) seek a Path Order along the old railway track bed (Route B); or
 - b) pursue a Path Agreement with the landowner for the alternative route (Route A and C); and
- ii. **Agree** that the Path Order would result in a more accessible route and deliver the best outcomes for local communities (in accordance with the advice of the Local Access Forum) and **approve** the option to seek a Path Order.

3 Implications

- 3.1 **Resource** – Both a Path Agreement or a Path Order would require considerable staff time to prepare and finalise all the details involved. The construction of the path will also require funding although the PWA have been very successful in constructing all previous sections of the route and are committed to completing this section. A Path Agreement is more likely to contain mitigation measures and possible payments to the landowner which incur greater cost. A Path Order, however, is not a guaranteed process but, if successful, is imposed upon the landowner and any mitigation is discretionary. The PWA would also be committed to its future maintenance although this may require to be underwritten by the Council. Whichever route is chosen it is likely to be designated a core path and may even be 'adopted' in the future. This would prioritise it as a route for any available discretionary maintenance funding.
- 3.2 **Legal** - Both options will require involvement of Legal Services. The drawing up of a Path Agreement will include certain commitments on all parties. A Path Order will likely require a public local inquiry and legal involvement in any submissions or hearing.
- 3.3 **Community (Equality, Poverty, Rural and Island)** – There is overwhelming support for the Peffery Way within the communities of Dingwall and Strathpeffer. This is evidenced by comments made in the core path planning consultation, the planning application consultation and ongoing involvement in voluntary work along completed sections, as well as posts and comments on social media. The benefits of this route also include a healthy option of travel than by vehicle.
- 3.4 **Climate Change / Carbon Clever** – The completion of an active travel route between the two communities could reduce the number of vehicles on the road as more people could choose to cycle, walk, ride or run this route. It is obviously more attractive if the route is as flat and level as possible which enables journeys to be less effort and quicker. This would favour the track bed option, but the modified alternative adds only a relatively small gradient and deviation.
- 3.5 **Risk** – The risk of not completing this route would retain the current status quo which does not enable a cycling link and use would remain limited to those on foot. The obstacles currently in place also deter some use. The risks of a Path Agreement or Path Order are that an agreement cannot be reached even on the alternative or that a Path Order submission is unsuccessful.

- 3.6 **Health and Safety (risks arising from changes to plant, equipment, process, or people)** – Completion of this route removes the safety risk of cycling along the A834 which is a fast road with bends reducing sightlines.
- 3.7 **Gaelic** - Where installed, signs to direct users to core paths will be bilingual subject to consultation with Community Councils.

4 Introduction

- 4.1 The Peffery Way Association (PWA) have undertaken much of the work in planning and negotiating with landowners, obtaining the funding and tendering the contractors with over 95% of the route now completed (**see Appendix 2**). There were two sections which the group found difficult to negotiate, the Dingwall terminus at Mill Street and this section at Millnain Croft, Blairninich.

The section of path at Mill Street, Dingwall went through the process of a compulsory Path Order, under the Land Reform (Scotland) Act 2003 by submission to the DPEA in 2021 and subsequent consideration by a Reporter. This was only the second Path Order submitted under this Act in Scotland and there have been no others since. The land subject to the Order comprised a short track which continued across the field. It was not being used by the owners, most of whom did not live near to the site and was overgrown. The Path Order was granted by Scottish Ministers in February 2023.

- 4.2 The second case – and the subject of this report – at Millnain Croft is very different. Here the proposed path runs along the old railway track bed (Route B in **Appendix 1**). This is being grazed by sheep with the owner's property looking out across fields to the track. The management of the grazing permits the sheep to roam freely across most of the croft and the fencing along the track bed is not secure.

The PWA believe the old railway track bed provides the most suitable route for the all-abilities active travel route as it is flat, and level and it also provides for much easier construction of an active travel path. The PWA have tried to negotiate with the landowner for several years and offered to provide for any concerns of the owners, such as new fencing and gates, tree planting and clearing out the former railway underpass.

However, the owners have remained opposed to the route, objecting to the planning permission and core path proposal. There has been some history of antagonism from both landowners and the public. The relationship between the landowner and the public has not always been cordial. With the landowner retaining barriers on the route and questioning people's right to be on the land. Equally some members of the public have been irresponsible, removing some signs, disturbing sheep, and breaking fences. There are also some heated comments on social media.

- 4.3 The landowner at Millnain Croft did eventually notify the PWA and the Outdoor Access Manager of an alternative route (Route A in **Appendix 1**) they would consider following fence lines on the field to the south of the track bed. Unfortunately, this route was considered unacceptable as an all-abilities active travel route due to its 90-degree bends, steep gradients and increased length. However, some modification (Route C in **Appendix 1**) could be made to reduce the angles, gradient and length. This option is still not the preference of the PWA and so they have now asked the Council to consider use of the statutory power to create a Path Order.

- 4.4 The options were discussed with the Ross & Cromarty Local Access Forum at their meetings on 3 October 2023 and 26 March 2024, and both the PWA and landowner were given an opportunity to state their case. After questions and consideration, the Forum decided by majority that the track bed option was the preferred route and would advise the Council to seek a Path Order.

5 A Path Agreement

- 5.1 A Path Agreement is a statutory power given to local authorities in section 21 of the Land Reform (Scotland) Act 2003. This would delineate, create, and maintain a path within land where access rights are exercisable. The Agreement would state terms and conditions as to payment or otherwise specified in it.
- 5.2 An agreement is a co-operative way to resolve this dispute and naturally involves compromise with both parties not receiving their ideal outcome. However, it could serve to gain the acceptance by the landowner of the Peffery Way on their land, albeit with reluctance.

6 A Path Order

- 6.1 A Path Order is a statutory power given to local authorities in section 22 of the Land Reform (Scotland) Act 2003. This is considered when the circumstances of a Path Agreement appear to be impracticable.
- This would delineate an existing or new path, then create and maintain it.
 - Control of the path would likely give duties under the Occupiers Liability (Scotland) Act 1960.
 - A path order may be revoked by the local authority.
 - Note is to be made on the land registration of an overriding interest.
 - Upon giving notice to the owner of the land, they may object within 28 days.
 - If an objection is made and not withdrawn the Order must be confirmed by Ministers.
 - The owner has an opportunity of being heard by a person appointed by Ministers for the purpose (a Reporter).
 - The Minister, after consideration of the report, can either confirm, decline, or modify the Order.
 - On confirmation the Order would have effect and the local authority must notify the owner.
- 6.2 A Path Order is more of a blunt instrument that is likely to be resented by the owner who would be unlikely to accept the route or be cooperative in any future matters arising.

7 Conclusion

- 7.1 There are very good reasons for pursuing either option available. It is important and very strongly supported that the Peffery Way should be completed to connect Dingwall with Strathpeffer with a safe, all-abilities path for non-motorised users. The old railway track bed (Route B) would deliver the best, shortest and most cost-effective outcome for the Peffery Way that would maximise accessibility of the route for local communities that it serves. The landowner does, however, not support this option and maintains the position that it will be disruptive to the management of Millnain Croft.

The modified alternative route proposed (Route A and C) offers a compromise but would deliver an inferior route that would cost more to construct, would be longer, and would be less accessible for all users. It would, however, improve possible future cooperation with the landowner.

On balance, and given the advice of the Local Access Forum, Members of this Committee are asked to approve a decision to seek a Path Order.

Designation: Assistant Chief Executive - Place

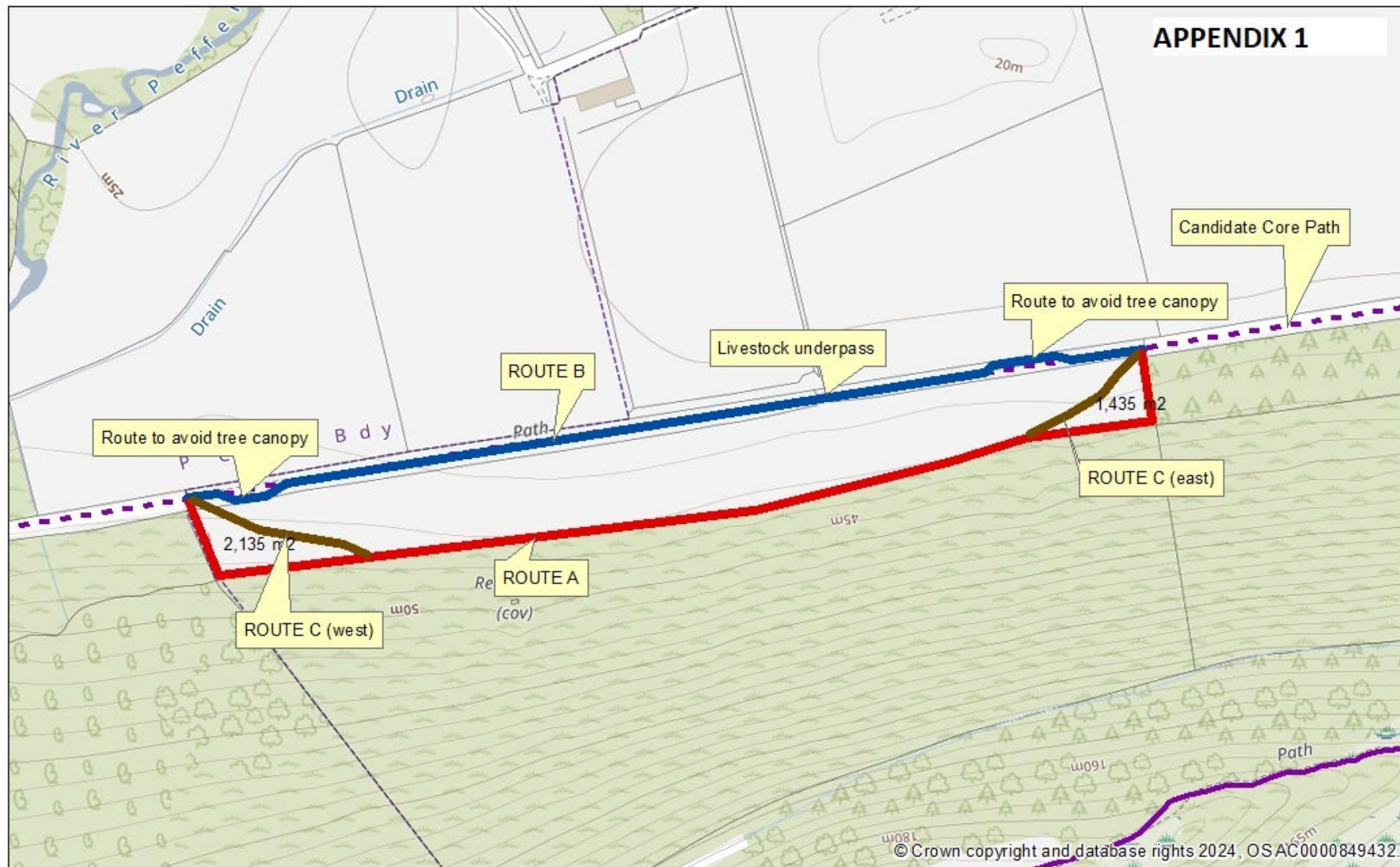
Date: 30 April 2024

Author: Philip Waite, Outdoor Access Manager

Background Papers: None

Appendices: Appendix 1 – Route Options at Millnain Croft Map
Appendix 2 – Overview Map
Appendix 3 – Photographs of land south of old railway track bed

APPENDIX 1



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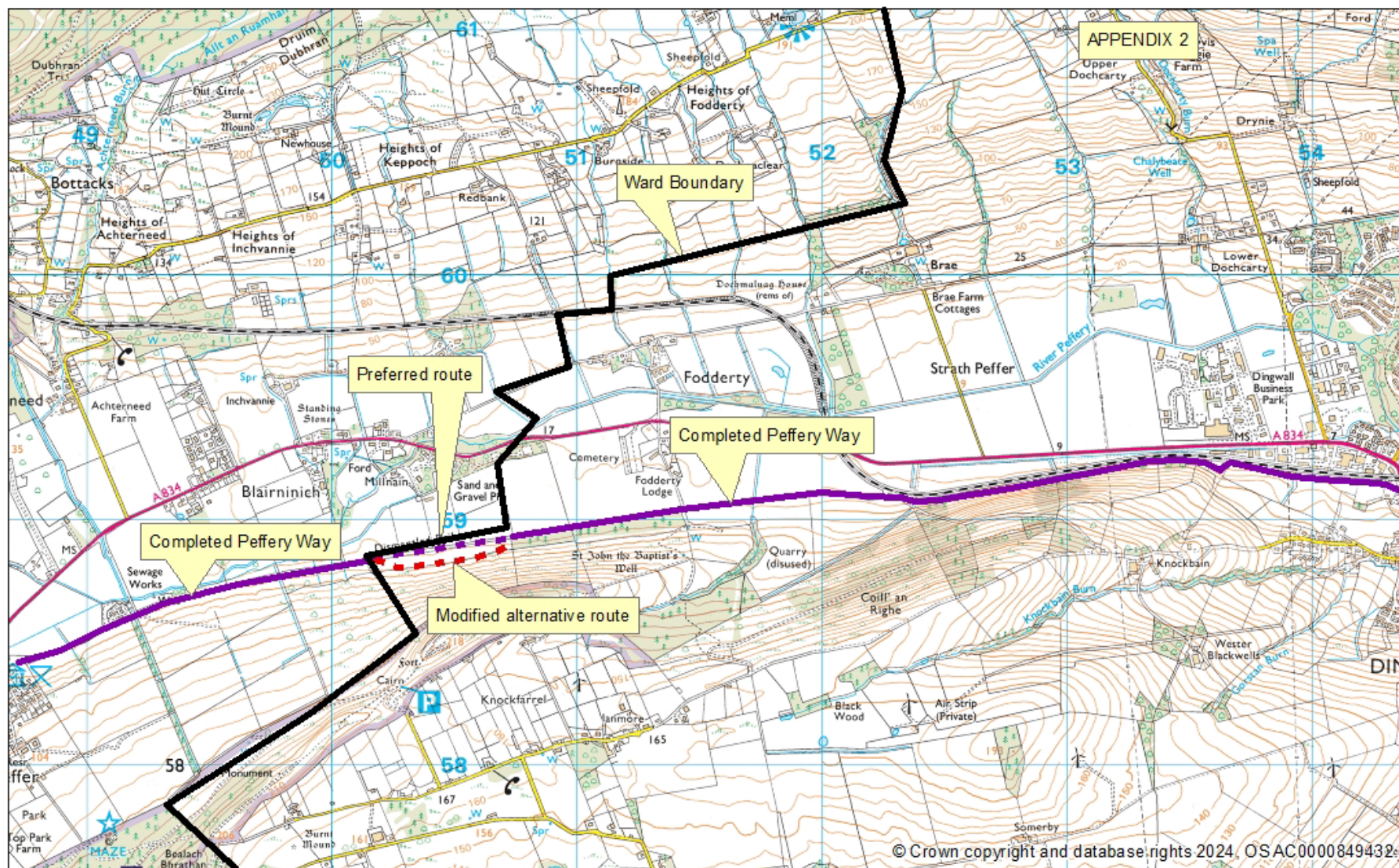
Millnain Croft - Peffery Way

Route Options

Ref:
Date:

0 10 20 40 60 80
1:3,000





Ref:
Date:

Subtitle

0 70 140 280 560
1:20,000



Appendix 3

Millnain Croft – Peffery Way photographs of current situation



PHOTO 1- Approach to Millnain Croft from west looking **east**



PHOTO 2 - Looking **east** towards field with proposed alternative route (Route A) which would run along line of gorse bushes in middle of photo



PHOTO 3 - Old Railway track bed looking **east**



PHOTO 4 - Old Railway track bed looking **east** showing location of underpass



PHOTO 5 - Approach to Millnain Croft from east looking **west**



PHOTO 6 - Looking **west** towards field with proposed alternative route (Route A) which would run below the line of gorse bushes in middle of photo.



PHOTO 7 – Old railway track bed looking **west** showing trees on line



PHOTO 8 - Old railway track bed looking **west** showing underpass



PHOTO 9 - Cyclist on completed section parallel to existing railway line

