

Imelda McCarron

From: Keith Collen
Sent: 06 January 2017 13:51
To: Anne Marie Broderick
Cc: Liz Nolan; Imelda McCarron
Subject: PROW Green Road Barristers opinion

Anne Marie

At the Council meeting 3 January 2017, it was agreed that the Council should seek a Barrister's opinion on the findings in relation to the PROW at the Green Road.

The cost of the Barrister should be to a max cost of £750.

Thanks

kc

Keith Collen
Leisure, Recreation & Sport Manager
Fermanagh and Omagh District Council
Townhall
Enniskillen
BT74 7BA

T: 0300 303 1777

Ms Annemarie Broderick
Fermanagh & Omagh District Council
Mountjoy Road
Omagh
Co. Tyrone
BT79 7BL]

Ref:

6 March 2017

Dear Ms Broderick

RE: GREEN ROAD, GREENCASTLE, OMAGH – PUBLIC RIGHT OF WAY

Thank you for your instructions in respect of the above matter. My fee in this matter, which took considerable time to review having regard to the volume of papers, is as follows:-

Counsel's fee	900.00
VAT at 20%	<u>180.00</u>
Total	£1080.00

Nothing further occurs at this stage.

If I can be of any further assistance please do not hesitate to get in touch.

Yours sincerely

Imelda McCarron

From: Anne Marie Broderick
Sent: 08 March 2017 11:33
To: Imelda McCarron
Subject: Fw: FODC opinion
Attachments: Green Road opinion.docx; DD FDC Ltr to Fermanagh & Omagh District Council re public right of way 06.03.17 JRrc.doc

Hi Imelda hope you are well,
I am currently off at the minute and just checking in on emails do thought I would forward this on.
If you have any queries in the meantime can you maybe forward them onto Philip in Derry.

Talk soon
Annemarie

From: ' ' !
Sent: 06 March 2017 21:51:35
To: Philip Kingston
Cc: Anne Marie Broderick
Subject: Re: FODC opinion

On 1 Mar 2017, at 09:18, Philip Kingston <Philip.Kingston@derrystrabane.com> wrote:

I'm not sure what matter she was briefing you on. I'll try to get some information to you early next week.

Regards,
Philip.

From: ' ' !
Sent: 28 February 2017 16:20
To: Annemarie Broderick Fermanagh <Annemarie.broderick@fermanaghomagh.com>; Philip

Kingston <Philip.Kingston@derrystabane.com>

Subject: Re: FODC opinion

Dear Philip

I received an "out of office" email from Anne Marie asking me to contact you

I enclose my emails below

thanks

On 28 Feb 2017, at 16:16,
wrote:

Anne Marie

I still have not got any covering letter to provide advices on this matter

regards

On 21 Feb 2017, at 00:18, I
< > wrote:

Anne Marie

I have not got the covering letter as yet.

I do have the papers. They are all in poly pockets which makes them hard to read

My assistant is going to take them out and punch them and put back back into the folder as otherwise I have to pull them all out individually etc and they will only end up all mixed up.

Some look like originals so I assume there will be no issue with me hole punching same.

regards

On 13 Feb 2017, at 14:31, Anne Marie
Broderick
<annemarie.broderick@fermanaghmagh.com>
wrote:

Dear I

A colleague of mine left up a brief for you in the Bar Library however I omitted to include the covering letter I shall forward this on by email.

Kind regard's

Annemarie

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Imelda McCarron

From: Imelda McCarron
Sent: 08 March 2017 19:47
To: Keith Collen
Subject: Green Road

from Greencastle was ringing this evening but I missed him – do you know if Robert is planning on taking the barristers opinion to Council at the best meeting?

Sent from my Windows 10 phone

Imelda McCarron

From: **alerts@fermanaghomagh.gov.uk** <alerts@fermanaghomagh.gov.uk>
Sent: 24 March 2017 12:33
To: Imelda McCarron
Subject: Request for Order Authorisation

Purchase Order Number 525024 has been raised by CLARISSA BEACOM and requires authorisation:

Totalview Link: Follow the link to Approve/Reject

Order No.	Date	Supplier	Req. No.	Raised By	Order Value
525024	24/03/2017	THE BAR OF NI	521101	CLARISSA BEACOM	900.00

NOTE

Remember to ensure that the expenditure has been allocated to the correct costcode.

Please do not print this alert. All information relating to this order can be viewed through your portlet.

.....

From: Clarissa Beacom
Sent: 24 March 2017 12:34
To: Imelda McCarron
Subject: Fw: Requisition 521101 to Order 525024 Notification

FYI

Clarissa Beacom
Community, Health and Leisure
Fermanagh and Omagh District Council
0300 303 1777 ext: 21101

From: **alerts@fermanaghomagh.gov.uk** <alerts@fermanaghomagh.gov.uk>
Sent: 24 March 2017 12:34
To: Clarissa Beacom
Subject: Requisition 521101 to Order 525024 Notification

The following details confirm the creation of your order number 525024 dated 24-Mar-2017 from Requisition number 521101. This order has been forwarded to your chosen authoriser for authorisation

Supplier Name	Line No	Line Type	Line Desc	Line Qty	Line Price	Line Amount
THE BAR OF NI	1	1	Barrister's Opinion for the Assertion of the Green Road Public Right of Way (Greencastle)	1.00	900.00	900.00
Grand Total						900.00

NOTE

You will receive a further alert when this requisition has been authorised.

No action is required at present as a result of this alert.

Please do not print this alert. All information relating to this requisition can be viewed through your portlet.

Imelda McCarron

From: Creea McManus
Sent: 31 March 2017 13:11
To: Imelda McCarron
Subject: Re: Green Road Report

Could you please forward me the appendices for this report please and fanks

Creea McManus
PA to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

Tel: 0300 303 1777 Ext 21175
Email: creea.mcmanus@fermanaghomagh.com

From: Imelda McCarron
Sent: 20 March 2017 15:59:38
To: Keith Collen; Liz Wilson; Liz Nolan
Cc: Creea McManus
Subject: Green Road Report

Afternoon All,

Wasn't sure who best to send to so please find attached report for the Green Road due for April Committee. Robert was working on this with me and knows it is due to go - Creea added it to the agenda last week.

Thanks
melda

Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council

Tel: 0300 303 1777
F: 07702 919 798
imelda.mccarron@fermanaghomagh.com

Imelda McCarron

From: noreply@fermanaghomagh.com
Sent: 29 March 2017 14:51
To: Imelda McCarron
Attachments: doc00476620170329135058.pdf

TASKalfa 3051ci
[00:17:c8:06:bc:cf]

ASSERTION REPORT FOR THE GREEN ROAD, BETWEEN GREENCASTLE AND ROUSKY, CO TYRONE

Completed by: Countryside Recreation Officer

Date: November 2016

Preface

In February 2016 Fermanagh and Omagh District Council received a request by a number of residents in the Gortin-Rousky-Greencastle area to consider asserting the Green Road from Greencastle to Rousky as a public right of way.

The investigation procedure that Council officers followed is outlined below. For the purposes of this report, the first section gives an overall background to the process and is based on factual and documentary evidence that the Countryside Recreation Officer has researched and compiled.

The second part of the report is a collation of all the secondary supporting and contradicting evidence supplied by stakeholders in the area.

Section 3, the conclusion and recommendation is driven and dictated by the legislation.

Section 1

1.1 Background

A number of letters were received by Fermanagh and Omagh District Council in February 2016 requesting for an assertion investigation process to commence for an alleged public right of way along the Green Road from Greencastle to Rousky, Co. Tyrone. As a result, and under the powers granted to it under Section 3 of the Access to the Countryside (NI) Order 1983, the Council started a formal assertion investigation procedure in to the Green Road.

This report outlines the steps taken by Council staff, it gives a detailed report of the current condition of the road, a summary of the evidence and counter evidence for the assertion and the legislation that supports the recommendation of this particular case.

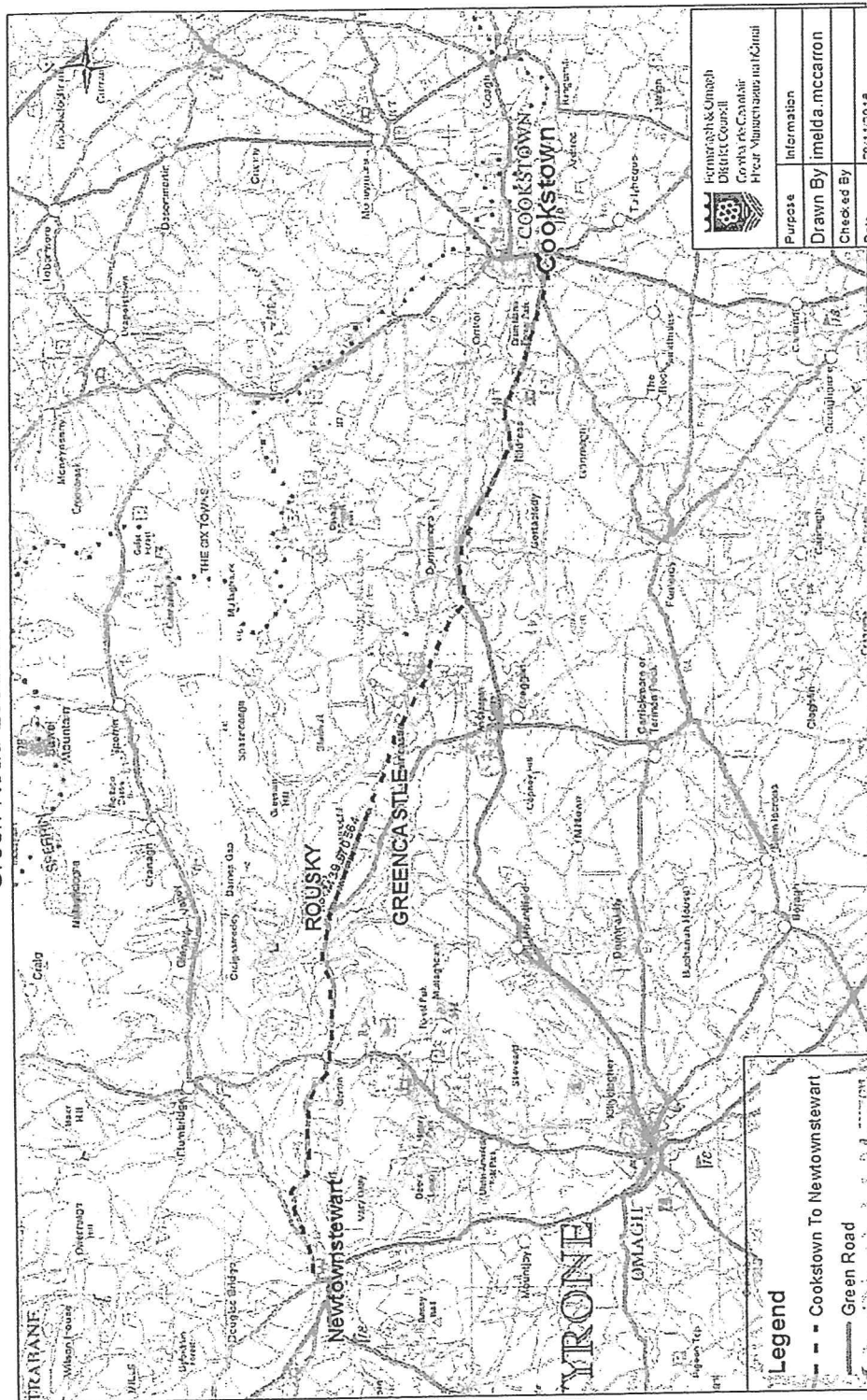
Be advised that this assertion report applies only to the Green Road, from Greencastle to Rousky. At the initial stages of the investigation some of the investigation evidence forms included the Mullydoo Road as being an alleged public right of way. As it stands, the Mullydoo Road is a road maintainable by Transport NI and as such, the Council cannot consider it for assertion as a public right of way. The abandonment of the Mullydoo Road is a separate issue for which Transport NI has ultimate responsibility and consequently is not dealt with in this report.

1.1.1 Location Context

The Green Road originally formed part of the public road which once linked Newtownstewart and Cookstown via Gortin (fig.1). Although much of this route is still in use as a public highway, the present public road, constructed in early 1800s now bypasses its middle section and thus the Green Road.

The section under focus runs eastwards from the Crockanboy Road at Rousky to the Mullydoo Road near Greencastle, a distance of 4.5km approximately.

Green Road Location



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1:197,476

263 428 0502 381,142,0977

0 1,625,250 6,500 Meters

Figure 1. Overview map showing location of Green Road between Greencastle and Rousky as original road between Cookstown and Newtown Stewart

1.1.2 Council's Statutory Duty

'A Guide to Public Rights of Way and Access to the Countryside' was prepared by the Environment and Heritage Service of the Department of the Environment to assist the staff of District Councils with responsibility for public access to the countryside. It provides a detailed understanding both of the legislative provisions made by the Access to the Countryside (NI) Order 1983 and the underlying framework of common law.

The legislation, set out in the Access to the Countryside (NI) Order 1983, places the District Council in a unique and powerful position in that the Council has a statutory duty to identify, record and protect existing access opportunities along public rights of way.

1.1.3 Defining a Public Right of Way

A public right of way is:

- Is a highway which any members of the public may use as of right; not a privilege granted by the landowner
- May be created specifically or through "deemed dedication" i.e. by the public openly using a path for a period of time (in some circumstances, for as little as a few years) with the knowledge of the landowner
- May be limited to certain types of user e.g. walkers only or walkers and horse riders
- Is a permanent legal entity and remains in existence unless and until the path is extinguished or diverted due to legal process. The maxim is: *Once a highway, always a highway*
- Must be respected by the occupier and landowner who should do nothing to obstruct the right of way or prevent or intimidate anyone from exercising their rights of passage.

The process of assertion is concerned solely and specifically with determining what public rights already exist and the nature of these rights.

In assessing the evidence that is available about each route, the only test the Council is able to apply is "does a public right of way – i.e. a right of passage – already exist over this line?" If it does then the Council has a duty to assert the path.

1.1.4 Initial Contact

Due to the initial letters that were issued to the Council, Council officers began the investigation process by issuing public right of way investigation evidence forms and documentary evidence forms to a number of the concerned residents that had initially written to the Council.

Following receipt of the replies from the concerned residents contacted, Council officers then sent public rights of way investigation landowner evidence forms and accompanying letters to all of the 22 landowners identified along the Green Road. The letters were issued on the 23 May 2016 with landowners given until the 27 June 2016 to respond.

From the 22 landowners contacted; 8 landowners replied supporting the assertion, 8 responded disagreeing with the assertion and 6 gave no response.

It is worth noting that although the same number of landowners agree and disagree with the assertion of the Green Road as a public right of way, the landowners who disagree with the assertion own a larger proportion of the route.

1.1.5 Documentary Evidence

The Green Road appears on a variety of maps as an old coach road, as far back as the 1700s. Assessing old maps, from online sources and from the OSNI maps in Omagh Library, the Green Road can be clearly identified.

In the earliest map, from 1796 the Green Road is the only road running between Cookstown and Newtownstewart, following the same straight line as today and mapped as a fully intact and continuous coach road (fig 1).

The first signs of an alternative road between Greencastle and Rousky appear in the 1834 map (Sheet 19). An alternative road can be seen South of the Green Road, i.e. the Crockanboy Road, however the Green Road is still on the map as a fully intact road.

In the 1908 map (Sheet 19) the Green Road starts to appear with small sections of the road as dashed lines. This suggests that although the Green Road is still viable there are sections of it which have become more like a farm track rather than a maintained road.

In the latest edition of the Ordnance Survey Map from 2015, the Green Road is still visible however none of it is as a road. There are small sections which have been completely removed from the map and the sections that do remain are mapped as tracks rather than road.

For the purposes of this report, both of these historic maps are too large to add as an appendix and can be viewed on request or the originals can be viewed in Omagh Library, however, a recent map of the area and the Green Road is attached at Appendix 1 of this report.

1.1.6 Secondary Evidence Groups

On the 02 June 2016 a preliminary visit was completed by the Director of Community, Health and Leisure and the Leisure, Recreation and Sports Manager along with one of the landowners along the Green Road, another basic site visit was

carried out on 24 August 2016 by Leisure, Recreation and Sports Manager and the Countryside Recreation Officer

Following this and the responses received from the landowners, over the dates of 22nd and 23rd of September, 25 different stakeholders were contacted as secondary evidence groups. Each group was issued with an investigation evidence form and a map for them to demonstrate where, if at all, they felt the public right of way was.

From the 25 groups contacted, only 7 of those responded – all of which were in support of the assertion of the Green Road as a public right of way.

In addition to the returned investigation evidence forms, 5 different pieces of documentary evidence were submitted from 5 individuals supporting the assertion, all of which are outlined below in section 2.1.1.

1.1.7 Survey Report

A detailed survey of the Green Road between Greencastle and Rousky was carried out on the 17 November 2016 by the Countryside Recreation Officer accompanied by a Leisure, Recreation and Sport Officer, see appendix 2. In summary of this survey;

- 60% of the Green Road is clearly visible and is intact or partially intact as an embankment upwards, 4 to 6m wide accessible only on foot
- Just under 30% of the Green Road is well maintained by the local farmers, compacted with stone and gravel
- Less than 10% has completely gone, being subsumed into a domestic garden at one point and being reclaimed for rough pasturage at another.
- With regard to impedances to movement there were 10 farm gates, 10 fences, 1 of which had a stile for easy crossing and four streams were encountered, again all of which were passable on foot.

Section 2

2.1 Collation of Evidence

In carrying out any assertion, the Council must gather sources of evidence so it can demonstrate that a public right of way does exist. The sources of evidence can come from witness statements, from historical and documentary evidence or from a combination of both.

The strongest evidence is normally given by witnesses who have themselves used the path or know from their own personal experience of its use over a long period of time. Documentary evidence can come from a wide range of sources; maps, guidebooks, records of proceeding or similar documents that might contain evidence

which either shows the existence of a public right of way or which can help to corroborate witness' statements or other evidence.

For the Green Road, a varied body of evidence was collected from a number of sources in order to clarify if a public right of way does exist over the Green Road. Any evidence submitted has been kept on file and can be viewed on request.

2.1.1 Supporting Evidence

The supporting evidence was gathered from stakeholders and historic interest groups who are willing to testify to the use of the Green Road as a public right of way. A list of the supporting evidence is given below;

- A 25th Anniversary Commemorative Programme for the Greencastle 5 mile run documenting the history of the Green Road
- A letter from one of the local community groups outlining the history of the Green Road, detailing how it was used in the past, as far back as the 1600s
- A letter from a local Councillor from Mid Ulster Council detailing the history of the Green Road and how it has been used in the past detailing as far back as 965AD
- A historical account on the history of the Green Road, detailing as far back as 965AD as compiled and submitted by one of the local community groups
- A detailed report on the Green Road, illustrating the road's origins and development, overview of its survival, current use, notable features and heritage significance. This report was submitted by one of the community groups but was completed by an independent industrial archaeologist.
- A letter from the officer in the legacy Omagh District Council, with supporting evidence from 1880 for the Green Road as a public right of way who has responsibility for public rights of way from c 1985 to c 2000

It is worth noting that the history documented in each of these pieces of evidence all corroborate and give similar accounts of the historic use of the Green Road.

2.1.2 Contradictory Evidence

In this instance the contradictory evidence received relates to the landowners consent and the current level of use at present.

From all of the groups and individuals consulted, 8 landowners are the only individuals to respond and say the route is not a public right of way. This is based on the opinions conveyed on the landowner investigation evidence forms.

A number of people have verbally portrayed the belief that the route cannot be asserted as a public right of way for a number of reasons;

- It is not in continual use and has not been used by the public ever in their living memory

- It is not an uninterrupted route from Rousky to Greencastle
- It has fallen out of use and some farmers have reclaimed the land for grazing

Section 3

3.1 Balance of Evidence and Legislation

Fermanagh & Omagh District Council has statutory duties towards public rights of way as defined under Article 3 of the Access to the Countryside (NI) Order 1983 which are defined below:

“A District Council shall assert, protect and keep open and free from obstruction or encroachment any public right of way; and for this purpose a District Council may institute proceedings in its own name”.

A public right of way is a permanent legal entity and remains in existence unless and until the path is extinguished or diverted due to legal process; *Once a highway, always a highway.*

The process of assertion is about assessing the evidence that is available about the route, the only test the Council is able to apply is “does a public right of way i.e. a right of passage already exist over this line”? If it does the Council has a duty to assert the path.

Although no one statement should be relied on as conclusive proof of the existence of a right of way, it will often be found that three or four statements collected from independent witnesses corroborate with each other and build up a broad picture of the existence of a public right of way.

The evidence statements provided for the Green Road are inconclusive with an equal number of land owners arguing for and against the existence of a public right of way. However, when the additional interest groups were contacted, there was a great number of witnesses claiming the existence of a right of way.

All of the witness statements were checked with consistency with the survey report and the early, large scale editions of Ordnance Survey maps. The Green Road is undoubtedly a marked feature along the majority of the route as a raised embankment but when looked at with the survey report it is clear to see that some sections of the Green Road have not been walked frequently as there is no sign of footfall.

For a public right of way to arise at common law, use must be over a more-or-less consistent line. This does not mean that the route must have been defined on the ground. If the path is still used regularly the line will often be visible on the ground. If not, the line may still be apparent from the presence of old stiles, gates, boundary walls / fencing or may be shown as a feature on the ground such as an embankment, such as the case with the Green Road.

Not all of the rights that exist with a public right of way will necessarily have been established at the same time, or continued to be exercised up to the present day. The fact that a stile was subsequently put up which restricted use, or that the path was obstructed so that no one could use it or that is simply "fell out of use" does not take away any of the rights that have become established. They continue to exist in law and may be lawfully exercised by the place

Although a farmer / landowner may believe, for example, that a particular path "has fallen into disuse and is no longer needed today", threatens the security of the farm holdings or conflicts with today's farming practices, he or she has no right to avert or extinguish the path.

If it is found that there is enough evidence to support an assertion, given that the rights already exist in law, any concerns that are raised about the desirability and suitability of the route are not relevant. No matter how sympathetic the Council may be, it has no option but to make the assertion. Conversely, if the evidence is insufficient and the test cannot be satisfied then Council has no power to make an assertion, no matter how desirable it may seem for the public to have additional rights.

A Condition Survey Report is attached as Appendix 2 of this report.

Section 4

1.4 Summary

While reviewing evidence the 'Guide to Public Rights of Way and Access to the Countryside' reiterates the importance of continuing to focus on the single question of whether a public right of way can or cannot be shown to exist over a particular route.

The Council must not be swayed by desirability or suitability of the route, costs of restoring the path, strength of the landowner feelings or any other issues that may be at play.

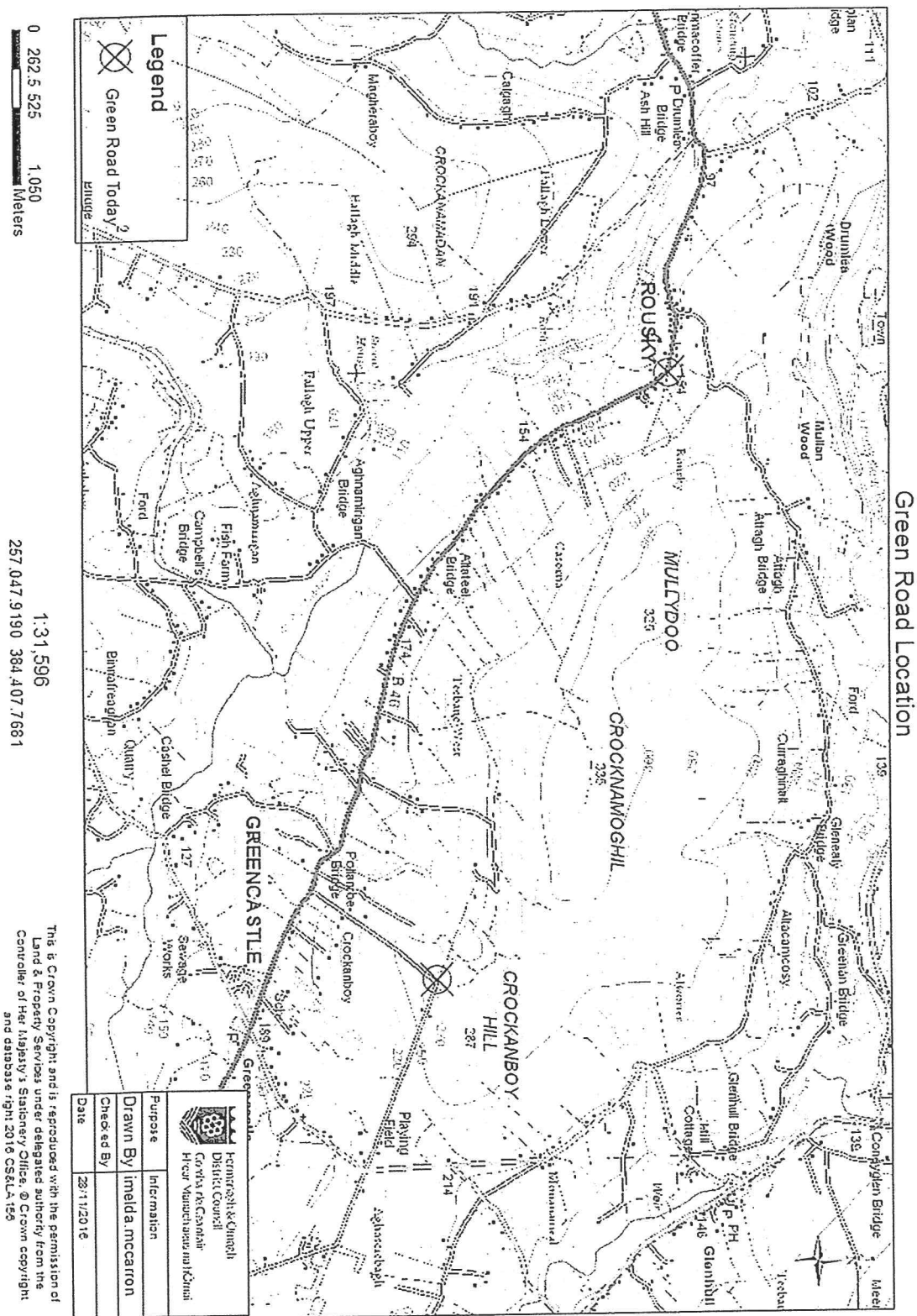
Taking into consideration the historic maps, the corroborating historical accounts of the origin of the Green Road and the evidence investigation forms, the countryside recreation officer, along with the Council's solicitor has evaluated the evidence, considered the legislation, and on the balance of probability a right of way can be said to exist along the Green Road.

It is recommended that the Council accepts the formal assertion statement and accompanying map to assert the Green Road from Greencastle to Rousky as a public right of way. The assertion statement will be supported by this assertion report and the original evidence gathered.

APPENDICES

Appendix 1.

Condition of Green Road on recent Ordnance Survey Map



Appendix 2

Condition Survey Report

SURVEY OF GREEN ROAD BETWEEN GREENCASTLE AND ROUSKY, CO TYRONE

Completed by: Countryside Recreation Officer

Accompanied by: Leisure, Recreation and Sport Officer

Date: 17 November 2016

Field Survey

A ground survey of the Green Road was carried out on 17 November 2016 by the Countryside Recreation Officer and a Leisure, Recreation and Sport Officer. The route was walked from East to West, starting where the Green Road meets the Mullydoo Road to where it meets the Crockanboy Road at Rousky. Although the line of the road runs WNW-ESE, it is assumed to run East to West for the purpose of this report.

Survival of Green Road

Apart from a slight bend on the West end, the Green Road runs in a straight line for its entire 4500m length. The extent of the Green Road still intact varies along the route; for just over 3km (60%) the route is clearly visible and is intact or partially intact as an embankment upwards, 4 to 6m wide accessible only on foot, just under 30% of the Green Road is well maintained by the local farmers, compacted with stone and gravel and less than 10% (30m) has completely gone, being subsumed into a domestic garden at one point and being reclaimed for rough pasturage at another.

Where the gradient of the land allows, there is clear sight of the Green Road along the horizon. The road is generally bounded by post-and-wire fences on both sides, and a drainage channel on the north side.

Physical Barriers to Access

When walking the route there were a number of barriers to access encountered along the way, however non surmountable. There were 10 farm gates, none of which were locked on the day of the survey. There were 10 fences, 1 of which had a style for easy crossing. The fences varied in condition, ranging from very stable, newly erected fencing to old, dilapidated fencing. All fences were sheep wire and were crossable with care.

Four streams were encountered. One particular area, approximately 10m wide was an erosion valley. The ground was steep, and a slight deviation of the straight line Green Road was required to cross safely but it was passable with care. One of the small streams further west had a pallet placed over it to aid safe crossing.

Points of Interest

Along the majority of the Green Road, the route is in isolated hill terrain. There are points whereby it crosses active farmland and whereby the farm sheds run adjacent to the road. The 'Pollan Rua Cottage' also sits adjacent to the road, with the road running through the garden of the cottage.

There are 7 points along the Green Road whereby tracks branch off the road. Most of these are farm tracks, some of which are used for farmers to access the bog above the Green Road. The Mullydoo Road crosses the Green Road at 1 particular point – here an old cottage ruin can be seen.

A single wind turbine sits just South of the Green Road, approximately 1km from the starting point in Rousky. It is worth noting the wind turbine does not transverse the route but however sits below at a minimum of 30m away from the road.

APPENDIX 1: GREEN ROAD PHOTOS

As route was walked east to west

GREEN ROAD SURVEY, NOVEMBER 2016

Figure 01

Start of Green Road, looking west toward
Rousky, where the road meets the Mullydoo Road

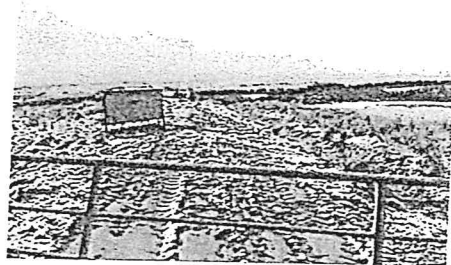


Figure 02

Track just down from the Pollan Rua Cottage, looking east
towards the Mullydoo Road

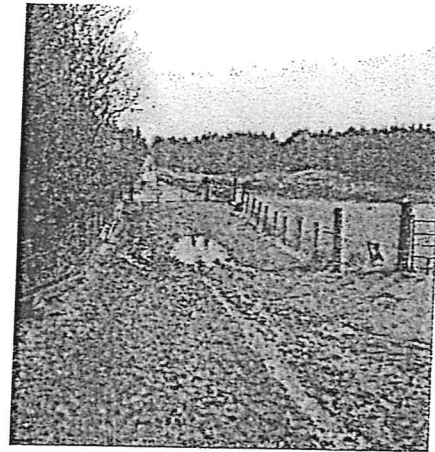


Figure 03

Ward's farm track disappearing, looking east towards
Mullydoo Road



Figure 04

Farm track disappears at the end of Ward's land, Green Road is still an obvious embankment (looking east toward Mullydoo Road)



Figure 05

Green Road has been reclaimed for the Pollan Rua Cottage gardens.

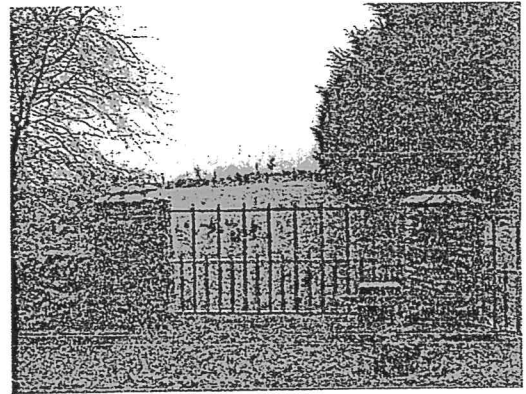


Figure 06

Double fence to cross on the eastern end of the garden

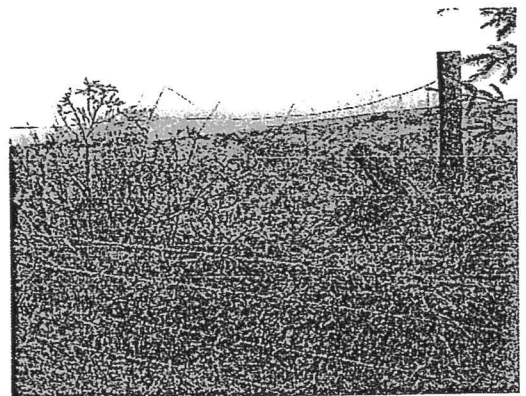


Figure 07

Heading west after the Pollan Rua Cottage, approximately 800m from the start at the Mullydoo Road – Green Road is still evident as a 4-6m wide upward embankment

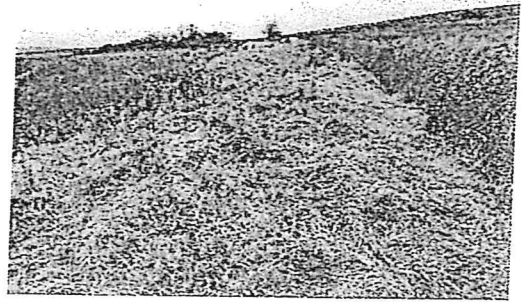


Figure 08

Heading west, the embankment becomes more fractured. This uneven parcel lasts for approximately 50m but it is passable with care



Figure 09

Green Road returns to intact embankment after McDermott's Cottage

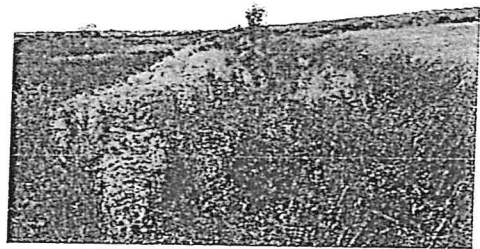


Figure 10

McDermott's Cottage Ruins adjacent to the Green road at the point where the Mullydoo Road intersects



Figure 11

Ascending uphill due west towards Rousky. Green Road still intact, as a raised embankment (approximately 1200m from the start at Mullydoo Road)

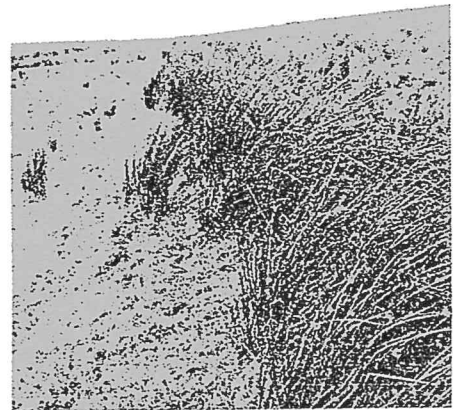


Figure 12

Steep erosion gulley transects the Green Road. Slight deviation of straight line of Green Road required to pass

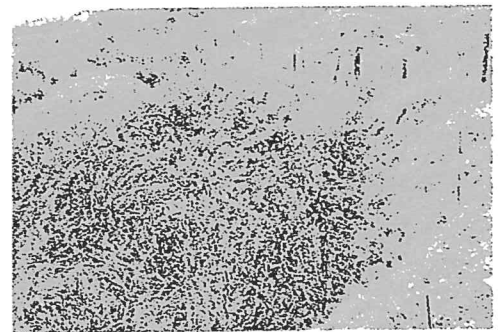


Figure 13

Erosion gulley looking South West toward the Crockanboy Road. Gulley measures approximately 10m wide



Figure 14

Green Road return to intact embankment after heading into Bradley's land



Figure 15

Stile providing to assist crossing over the fence, due west approximately 2km from the start at the Mullydoo Road

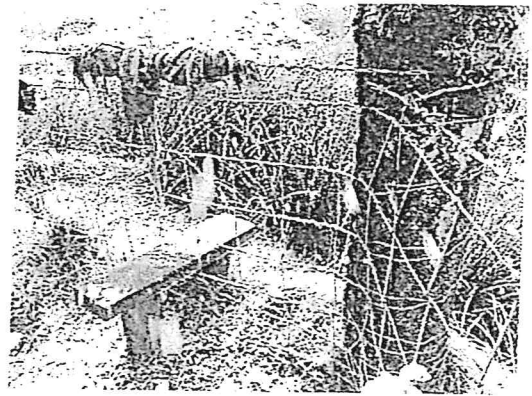


Figure 16

View looking west toward Rousky where farm track runs from Crockanboy Road and joins with the Green Road on the south side. Green Road is still evident as embankment and fenced along the route

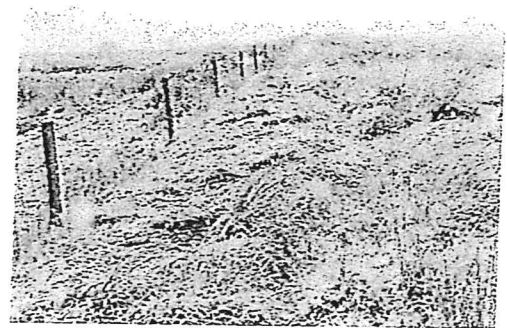


Figure 17

Pallet covering one of four streams to aid crossing



Figure 18

Bog track looking west toward Rousky, approximately 2km from the end of the Green Road in Rousky



Figure 19

Continued bog track looking west towards Devlin's land, route visible in the distance. Note wind turbine below route



Figure 20

Gate after wind turbine due west towards Rousky

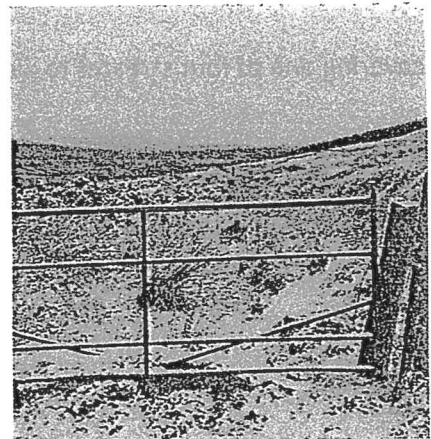


Figure 21

Green Road has been reclaimed for rough pasturage. Looking west towards Rousky

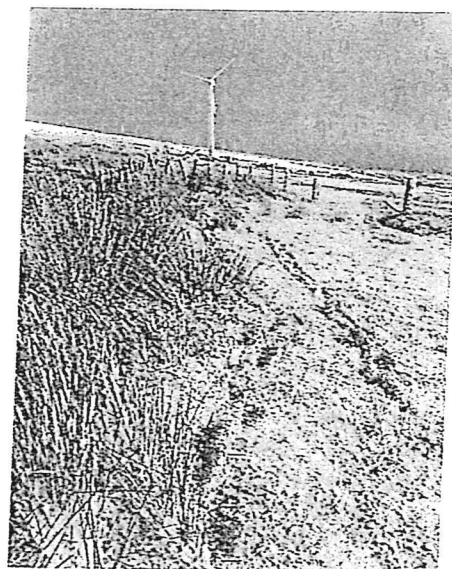


Figure 22

Green Road has been reclaimed for rough pasturage. Looking west towards Rousky. Fencing still aligns along Green Road



Figure 23

Final section, approximately 500m from the Rousky end of the Green Road is a mix of over grown rushes and overgrown grass bank



Figure 24

Looking West toward Rousky, Green Road resumes to clearly defined fenced, raised grass embankment

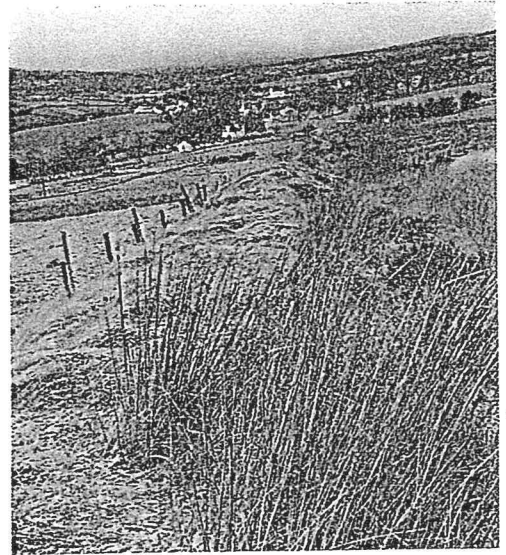


Figure 25

Looking back east, toward Greencastle as track descends into Rousky. Green Road is evidently fenced and continues as a raised embankment

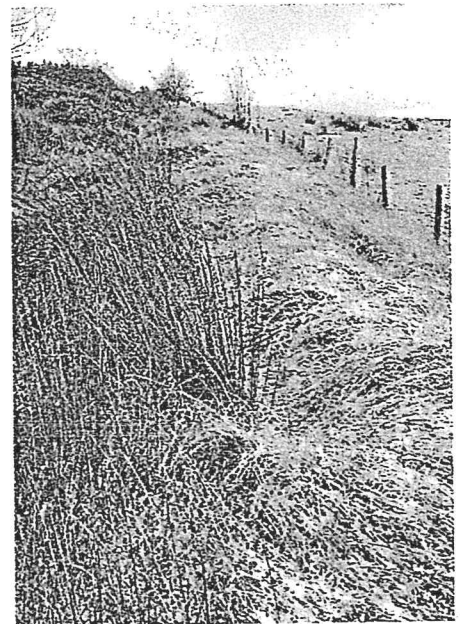
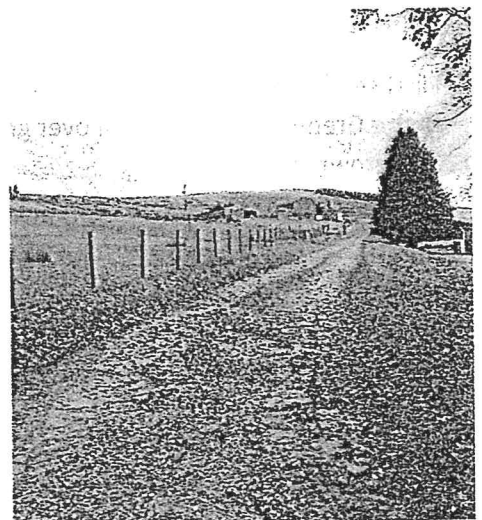


Figure 26

End of route in Rousky at the start of the junction of the Green Road and the Crockanboy Road. Maintained farm track running for approximately 220m



SURVEY OF GREEN ROAD BETWEEN GREENCASTLE AND ROUSKY, CO TYRONE

Completed by: Countryside Recreation Officer

Accompanied by: Leisure, Recreation and Sport Officer

Date: 17 November 2016

Field Survey

A ground survey of the Green Road was carried out on 17 November 2016 by the Countryside Recreation Officer and a Leisure, Recreation and Sport Officer. The route was walked from east to west, starting where the Green Road meets the Mullydoo Road to where it meets the Crockanboy Road at Rousky. Although the line of the road runs WNW-ESE, it is assumed to run east to west for the purpose of this report.

Survival of Green Road

Apart from a slight bend on the west end, the Green Road runs in a straight line for its entire 4500m length. The extent of the Green Road still intact varies along the route; for just over 3km (60%) the route is clearly visible and is intact or partially intact as an embankment upwards, 4 to 6m wide accessible only on foot, just under 30% of the Green Road is well maintained by the local farmers, compacted with stone and gravel and less than 10% (30m) has completely gone, being subsumed into a domestic garden at one point and being reclaimed for rough pasturage at another.

Where the gradient of the land allows, there is clear sight of the Green Road along the horizon. The road is generally bounded by post-and-wire fences on both sides, and a drainage channel on the north side.

Physical Barriers to Access

When walking the route there were a number of barriers to access encountered along the way, however non surmountable. There were 10 farm gates, none of which were locked on the day of the survey. There were 10 fences, 1 of which had a style for easy crossing. The fences varied in condition, ranging from very stable, newly erected fencing to old, dilapidated fencing. All fences were sheep wire and were crossable with care.

Four streams were encountered. One particular area, approximately 10m wide was an erosion valley. The ground was steep, and a slight deviation of the straight line Green Road was required to cross safely but it was passable with care. One of the small streams further west had a pallet placed over it to aid safe crossing.

Points of Interest

Along the majority of the Green Road, the route is in isolated hill terrain. There are points whereby it crosses active farmland and whereby the farm sheds run adjacent to the road. The 'Pollan Rua Cottage' also sits adjacent to the road, with the road running through the garden of the cottage.

There are 7 points along the Green Road whereby tracks branch off the road. Most of these are farm tracks, some of which are used for farmers to access the bog above the Green Road. The Mullydoo Road crosses the Green Road at 1 particular point – here an old cottage ruin can be seen.

A single wind turbine sits just south of the Green Road, approximately 1km from the starting point in Rousky. It is worth noting the wind turbine does not transverse the route but however sits below at a minimum of 30m away from the road.

APPENDIX 1: GREEN ROAD PHOTOS

As route was walked east to west

GREEN ROAD SURVEY, NOVEMBER 2016

Figure 01

Start of Green Road, looking west toward
Rousky, where the road meets the Mullydoo Road



Figure 02

Track just down from the Pollan Rua Cottage, looking east
towards the Mullydoo Road

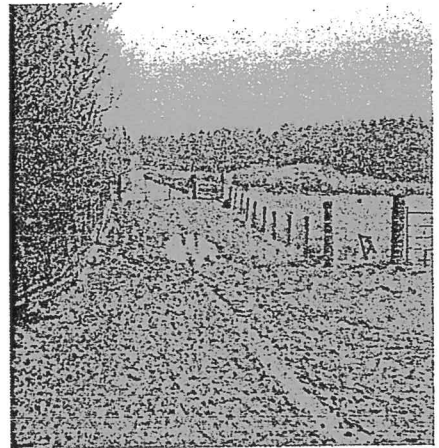


Figure 03

Ward's farm track disappearing, looking east towards
Mullydoo Road



Figure 04

Farm track disappears at the end of Ward's land, Green Road is still an obvious embankment (looking east toward Mullydoo Road)



Figure 05

Green Road has been reclaimed for the Pollan Rua Cottage gardens.

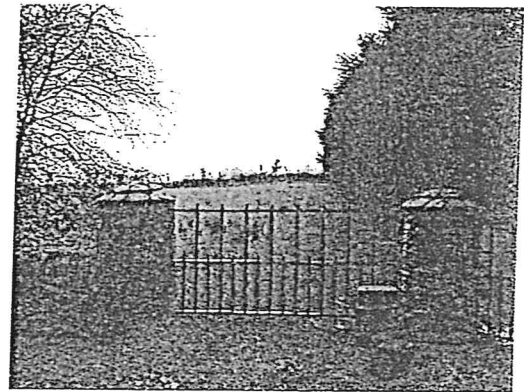


Figure 06

Double fence to cross on the eastern end of the garden



Figure 07

Heading west after the Pollan Rua Cottage, approximately 800m from the start at the Mullydoo Road – Green Road is still evident as a 4-6m wide upward embankment



Figure 08

Heading west, the embankment becomes more fractured. This uneven parcel lasts for approximately 50m but it is passable with care



Figure 09

Green Road returns to intact embankment after McDermott's Cottage

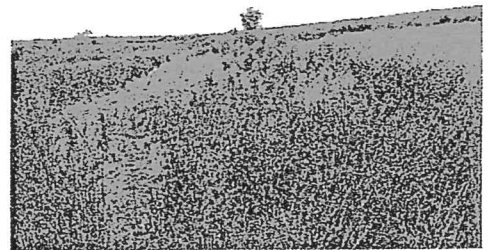


Figure 10

McDermott's Cottage Ruins adjacent to the Green road at the point where the Mullydoo Road intersects



Figure 11

Ascending uphill due west towards Rousky. Green Road still intact, as a raised embankment (approximately 1200m from the start at Mullydoo Road)

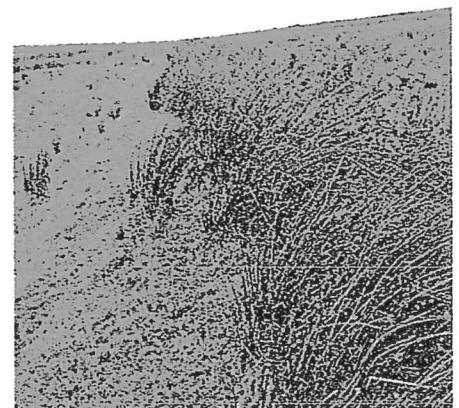


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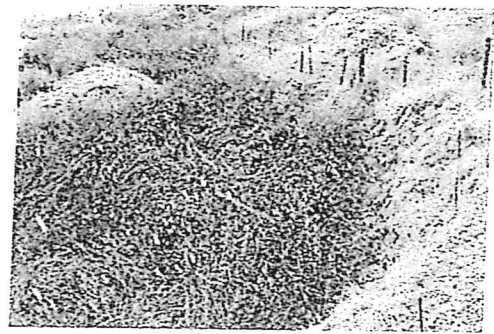


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Erosion gulley looking South West toward the Crockanboy Road. Gulley measures approximately 10m wide

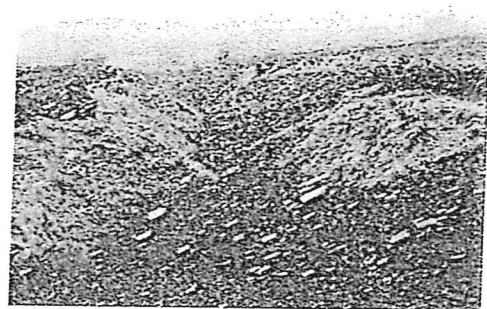


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Green Road return to intact embankment after heading into Bradley's land



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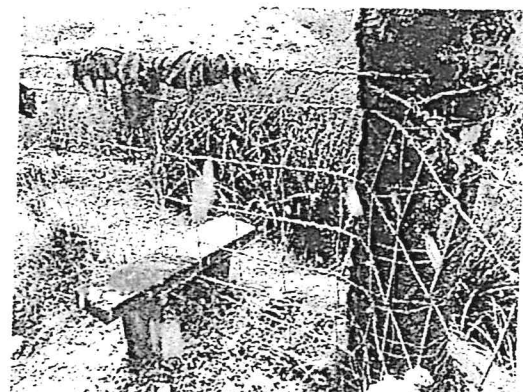


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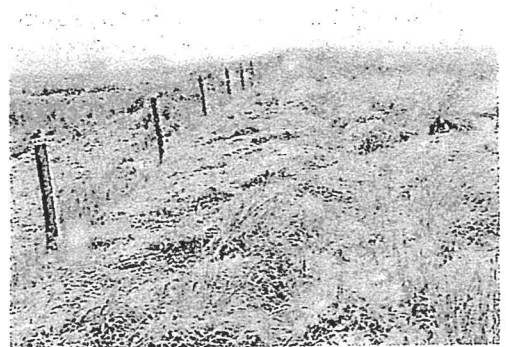


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Pallet covering one of four streams to aid crossing



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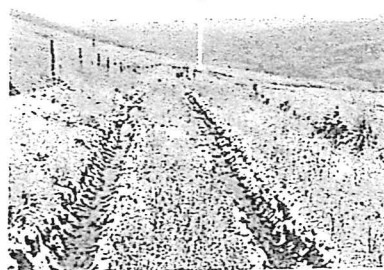


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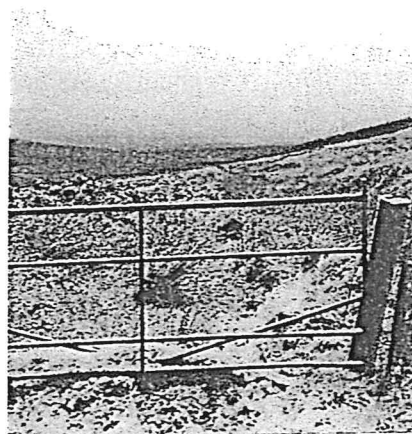


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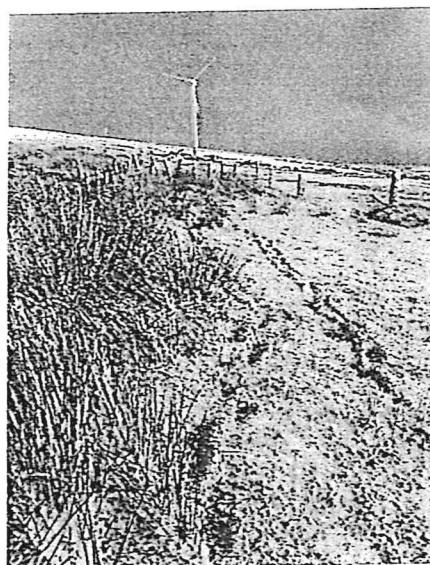


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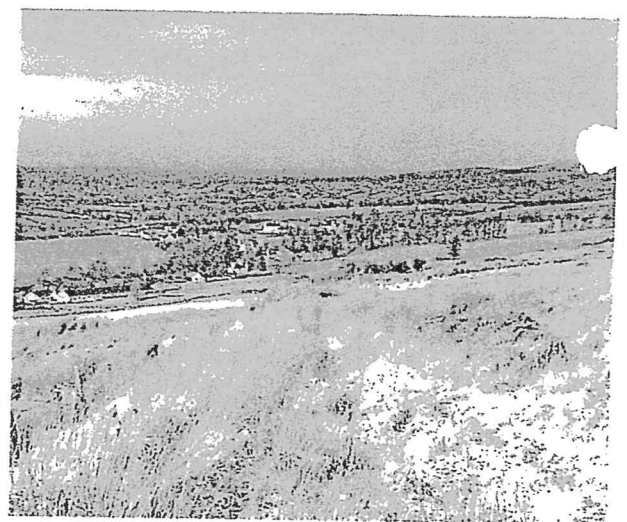


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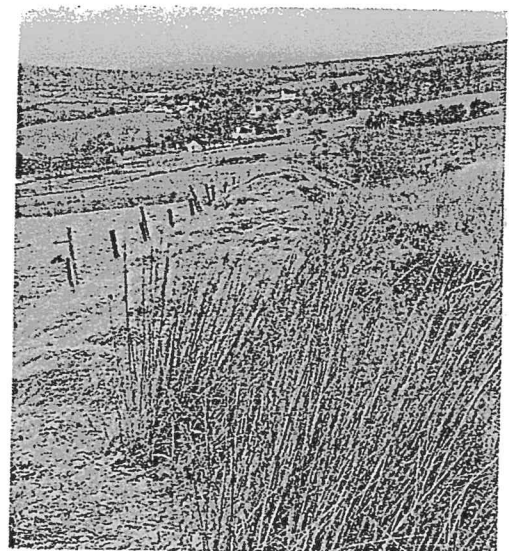


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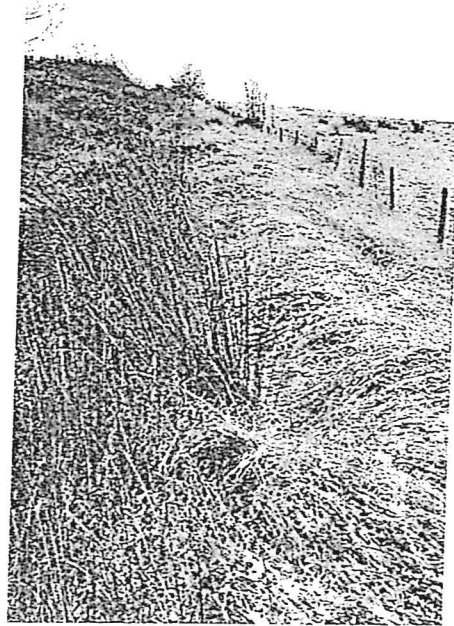


Figure 26

End of route in Rousky at the start of the junction of the Green Road and the Crockanboy Road. Maintained farm track running for approximately 220m



FERMANAGH AND OMAGH DISTRICT COUNCIL

Minutes of Confidential Meeting of: Regeneration & Community Committee

Date and Time: Tuesday 11 April 2017 at 9.05 pm

Location: Council Chamber, The Townhall, Enniskillen

Chair: Councillor Victor Warrington

Present: Councillors:

Diana Armstrong; Alex Baird; Glenn Campbell; Sean Clarke; Debbie Coyle; John Coyle; Josephine Deehan; Frankie Donnelly; Joanne Donnelly; Sean Donnelly; Keith Elliott; Raymond Farrell; Anthony Feely; John Feely; Sheamus Greene; Sorchá McAnespy; Brian McCaffrey; Marty McColgan; Barry McNally; Thomas O'Reilly; Allan Rainey MBE; Paul Robinson; Rosemarie Shields; Chris Smyth; Errol Thompson; Howard Thornton; Bert Wilson

In Attendance: Director of Regeneration and Planning;
Director of Community, Health and Leisure;
Democratic Services Officer

8. Assertion of the Green Road Public Right of Way

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e

Signed: _____
Chairman

Signed: _____
Clerk and Chief Executive

Date: _____

Imelda McCarron

From: Creea McManus
Sent: 12 April 2017 17:13
To: Imelda McCarron
Subject: Final Assertion of the Green Road PROW Report
Attachments: 170411-LRS-Assertion of the Green Road Public Right of Way.docx; 170411-LRS-Assertion of the Green Road Public Right of Way-Appendix 1.docx; 170411-LRS-Assertion of the Green Road Public Right of Way-Appendix 2.docx

Creea McManus
PA to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

Tel: 0300 303 1777 Ext 21175
Email: creea.mcmanus@fermanaghomagh.com

Imelda McCarron

From: f
Sent: 25 April 2017 22:46
To: Imelda McCarron
Cc:
Subject: Re: Green Road Files

Imelda

At the bar library. If you want to let me know when suits to collect, I will arrange to have them left at reception

Can you copy in : so she can look them out and parcel them up marked for your attention on the nominated day.

regards

On 25 Apr 2017, at 11:08, Imelda McCarron <imelda.mccarron@fermanaghomagh.com> wrote:

Hi

Thanks for coming back to me. Yea I think in this instance I would prefer to collect them by hand given the sensitivity of the case. Are you based in Belfast yea?

Thanks
Imelda

From: f
Sent: 24 April 2017 18:52
To: Imelda McCarron
Subject: Re: Green Road Files

Imelda

I have 2 files which seem to have the originals. I have punched them and put them into lever arch files as they were very hard to manage when in poly pockets

I can return them by DX if you wish although since they are originals and perhaps of evidential significance, you may wish to have them collected by hand.

regards

On 24 Apr 2017, at 15:20, Imelda McCarron
<imelda.mccarron@fermanaghomagh.com> wrote:

Hi

I went in to collect the Green Road files from Anne Marie's office and I was only able to find the copies. Do you still have the original versions?

Many thanks
Imelda

*Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council*

*T: 0300 303 1777
M: 07702 919 798
E: imelda.mccarron@fermanaghomagh.com*

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Imelda McCarron

From: Creea McManus
Sent: 02 May 2017 16:05
To: Imelda McCarron
Subject: Fw: FOI Request - LA10/2016/0030/DETEIA and LA10/2016/0137/PAD files

Creea McManus
PA to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

Tel: 0300 303 1777 Ext 21175
Email: creea.mcmanus@fermanaghomagh.com

From: Melissa Little
Sent: 02 May 2017 12:27
To: Creea McManus
Subject: RE: FOI Request - LA10/2016/0030/DETEIA and LA10/2016/0137/PAD files

Hi Creea

No these weren't sent but I suppose her original request was for info relating to the forthcoming planning applications in the subject line of the email and planning advised they were DfI files. Her email below now broadens the request to correspondence relating to road abandonment, public right of way and permitted dev rights so I will send those minutes - thanks for that .

Can you let me know if Imelda can provide anything on the PROW investigation, or a brief summary of the process.

I am also waiting on Darren Lawther (Planning) to come back to me with a response in relation to Permitted Development Rights, so no panic.

Thanks

Melissa Little
Policy Officer

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghomagh.com
Fax (Townhall): 028 66 322 024

From: Creea McManus
Sent: 28 April 2017 17:44
To: Melissa Little; Imelda McCarron
Subject: Re: Possible *** SPAM *** RE: FOI Request LA10/2016/0030/DETEIA and LA10/2016/0137/PAD files

Imelda - could you please confirm that there was no discussions , other than what has already been submitted.

As you will see below the lady is requesting further information - the PROW evidence from submitted by should be furnished - there may be some issues with confidentiality here though??

It may be useful to provide a brief outline of the process of the PROW investigation to the lady - what do you think?

Creea

Creea McManus

PA to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

Tel: 0300 303 1777 Ext 21175

Email: creea.mcmanus@fermanaghomagh.com

From: Melissa Little

Sent: 28 April 2017 14:46:16

To: Creea McManus

Subject: Fw: Possible *** SPAM *** RE: FOI Request - LA10/2016/0030/DETEIA and A10/2016/0137/PAD files

Hi Creea

As per our telephone conversation, see below email from think some will relate to planning but if you could check with Imelda and see if she could provide me with some wording in relation to public right of way. I can check with E&P about road abandonment and then Planning for Permitted Development Rights.

Thank-you

Melissa

From:

Sent: 27 April 2017 11:26 AM

To: Freedom of Information

:

Subject: RE: Possible *** SPAM *** RE: FOI Request - LA10/2016/0030/DETEIA and A10/2016/0137/PAD files

Good morning Melissa

Thank you for your response.

I note, however, that there is a clear absence of any Council correspondence in relation to discussions regarding the Public Right of Way, road abandonment and Permitted Development rights that have been taking place between Dalradian and Council staff.

As per my original request, we respectfully request a copy of any emails, telephone notes, internal memos, minutes of meetings or other documentation/submissions made between staff of Fermanagh and Omagh District Council and Dalradian Gold Ltd.

Kind regards,

From: Freedom of Information [mailto:foi@fermanaghomagh.com]

Sent: 13 April 2017 17:10

To:

Subject: Re: Possible SPAM *** RE: FOI Request
LA10/2016/0137/PAD files

, LA10/2016/0030/DETEIA and

ATI 822-17

With reference to your recent Freedom of Information request for a copy of any emails, telephone notes, internal memos, minutes of meetings or other documentation/submissions made between staff of Fermanagh and Omagh District Council and Dalradian Gold Ltd. in relation to a forthcoming planning application to be dealt with by DfI HQ please see attached our findings.

Please note personal details have been redacted in accordance with section 40 of the Freedom of Information Act - Personal information.

The planning department have advised that the planning applications within the subject line relate to DfI Headquarter files and if of any assistance they have provided the following contact:

Name: Niall Marshall
Telephone Number: 028 90540521

I hope this information is of assistance to you.

Regards

Melissa

From: [REDACTED]
Sent: 07 April 2017 09:05 AM
To: Freedom of Information
Cc: [REDACTED]
Subject: Possible SPAM *** RE: FOI Request [REDACTED], LA10/2016/0030/DETEIA and LA10/2016/0137/PAD files

Good morning

Can you please provide me with an update on my FOI request below?

Thank you.

Kind regards,

[REDACTED]



From:

Sent: 13 March 2017 10:53

To: foi@fermanaghmagh.com

Cc:

Subject: FOI Request -

LA10/2016/0030/DETEIA and LA10/2016/0137/PAD files

Good morning

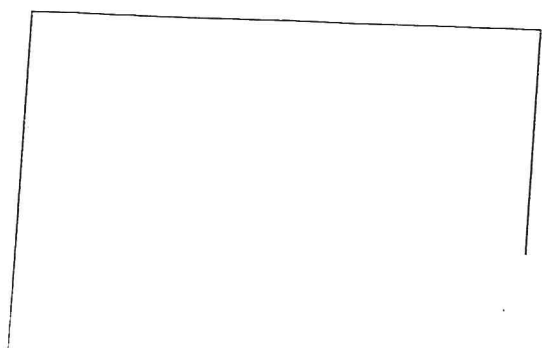
I would be grateful for a copy of any emails, telephone notes, internal memos, minutes of meetings or other documentation/submissions made between staff of Fermanagh and Omagh District Council and Dalradian Gold Ltd. in relation to the a forthcoming planning application to be dealt with by DfI HQ.

Please note we have already received any documentation held by the Environmental Health Department and therefore this can be excluded in any response received – see attached FYI.

For the avoidance of doubt we make this request under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.

Look forward to hearing from you.

Kind regards,



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Imelda McCarron

From: Creea McManus
Sent: 04 May 2017 15:52
To: Ian Davidson; Fiona Douglas; Gary Mortland; Liz Wilson
Cc: Imelda McCarron; Liz Nolan; Alison Gilmore; Irene Irwin
Subject: ACTION REQUIRED - R&C Committee April Actions
Attachments: 170411-RC-Minutes.pdf

Dear Head of Service

Please see below link to the folder containing the Actions arising from the Regeneration and Community Committee meeting on 11 April 2017.

R:\CHL\CHL Directors Office\Regeneration & Community\Actions\2017\170411-RC-April 2017

The minutes of the Regeneration and Community Committee meeting, which were ratified by Council on 2 May 2017, have been attached for your information - Liz I will forward the confidential minutes to you and Imelda separately.

Please action accordingly.

I would be grateful if you would ensure that an update of the actions taken is recorded for each action item - please note that this is **your** responsibility.

Regards

Creea

Creea McManus

PA to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

Tel: 0300 303 1777 Ext 21175
Email: creea.mcmanus@fermanaghomagh.com

RG/IMC

22 May 2017

Imelda.mccarron@fermanaghomagham.com

— letter sent to
all landowners
in 23 May 2017
@ .

Dear

RE: Public Right of Investigation
Green Road, Greencastle, Omagh

Further to my correspondence in October 2016, I am now contacting you to give a further update on the investigation process of the alleged Public Right of Way (PRoW) on the Green Road from Rousky to Greencastle.

Following receipt of a number of landowner investigation forms, on 17 November 2016 Council Officers carried out a basic survey of the route under investigation, taking note of visible signs of the alleged PRoW, ground conditions along the route, barriers to access and impedances to movement such as stiles and gates.

In addition, from September to December, other sources of secondary evidence were consulted ranging from old historical maps, evidence forms, press cuttings and witness statements. A wide range of stakeholders were contacted including historical societies, community groups, churches, schools and countryside recreation users.

Considering all of the evidence compiled, coupled with the findings of the survey, Fermanagh and Omagh District Council is content that the Green Road between Rousky and Greencastle can be classified as a Public Right of Way.

I have enclosed a summary report detailing the findings from the investigation process for your information. I would welcome any comments by 02 June 2017. You can contact me by telephoning 0300 303 1777 or email Imelda.mccarron@fermanaghomaggh.com.

I look forward to hearing from you.

Yours Sincerely

Imelda McCarron
Countryside Recreation Officer



Fermanagh & Omagh
District Council
Comhairle Ceantair
Fhear Manach agus na hÓmaí

SUMMARY OF THE ASSERTION REPORT FOR THE GREEN ROAD, BETWEEN GREENCASTLE AND ROUSKY, CO TYRONE

Completed by: Countryside Recreation Officer

Date: November 2016

Preface

In February 2016 Fermanagh and Omagh District Council received a request by a number of residents in the Gortin-Rousky-Greencastle area to consider asserting the Green Road from Greencastle to Rousky as a public right of way.

A summary of the investigation procedure that Council officers followed is outlined below. For the purposes of this report, a background to the process and legislation has also been included. A summary of all of the evidence is briefly outlined, followed by the conclusion and recommendation which has been driven and dictated by the legislation.

1.1.1 Defining a Public Right of Way

A public right of way is:

- Is a highway which any members of the public may use as of right; not a privilege granted by the landowner
- May be created specifically or through “deemed dedication” i.e. by the public openly using a path for a period of time (in some circumstances, for as little as a few years) with the knowledge of the landowner
- May be limited to certain types of user e.g. walkers only or walkers and horse riders
- Is a permanent legal entity and remains in existence unless and until the path is extinguished or diverted due to legal process. The maxim is: *Once a highway, always a highway*
- Must be respected by the occupier and landowner who should do nothing to obstruct the right of way or prevent or intimidate anyone from exercising their rights of passage.

The process of assertion is concerned solely and specifically with determining what public rights already exist and the nature of these rights.

In assessing the evidence that is available about each route, the only test the Council is able to apply is “does a public right of way – i.e. a right of passage- already exist over this line?” If it does then the Council has a duty to assert the path.

1.1.2 Initial Contact

A number of letters were received by Fermanagh and Omagh District Council in February 2016 requesting for an assertion investigation process to commence for an alleged public right of way along the Green Road from Greencastle to Rousky, Co. Tyrone (Appendix 1). As a result, and under the powers granted to it under Section 3 of the Access to the Countryside (NI) Order 1983, the Council started a formal assertion investigation procedure in to the Green Road.

Due to the initial letters that were issued to the Council, Council officers began the investigation process by issuing public right of way investigation evidence forms and documentary evidence forms to a number of the concerned residents that had initially written to the Council.

Following receipt of the replies from the concerned residents contacted, Council officers then sent public rights of way investigation landowner evidence forms and accompanying letters to all of the landowners identified along the Green Road.

1.1.3 Survey Report

A detailed survey of the Green Road between Greencastle and Rousky was carried out on the 17 November 2016 by the Countryside Recreation Officer accompanied by a Leisure, Recreation and Sport Office. In summary of this survey;

- 60% of the Green Road is clearly visible and is intact or partially intact as an embankment upwards, 4 to 6m wide accessible only on foot
- Just under 30% of the Green Road is well maintained by the local farmers, compacted with stone and gravel
- Less than 10% has completely gone, being subsumed into a domestic garden at one point and being reclaimed for pasturage at another.
- With regard to impedances to movement there were 10 farm gates, 10 fences, 1 of which had a style for easy crossing and four streams were encountered, again all of which were passable on foot.

Section 2

2.1 Collation of Evidence

In carrying out any assertion, the Council must gather sources of evidence so it can demonstrate that a public right of way does exist. The sources of evidence can come from witness statements, from historical and documentary evidence or from a combination of both.

The strongest evidence is normally given by witnesses who have themselves used the path or know from their own personal experience of its use over a long period of time. Documentary evidence can come from a wide range of sources; maps, guidebooks, records of proceeding or similar documents that might contain evidence which either shows the existence of a public right of way or which can help to corroborate witness' statements or other evidence.

For the Green Road, a varied body of evidence was collected from a number of sources in order to clarify if a public right of way does exist over the Green Road.

2.1.2 Documentary Evidence

Council officers continued to progress the investigation further by consulting a number of secondary evidence sources.

The Green Road appears on a variety of maps as an old coach road, as far back as the 1700s. Assessing old maps, from online sources and from the OSNI maps in Omagh Library, the Green Road can be clearly identified.

2.1.3 Secondary Evidence Groups

Following the responses received from the landowners, 25 different stakeholders were contacted as secondary evidence groups. Each group was issued with an investigation evidence form and a map for them to demonstrate where, if at all, they felt the public right of way was.

In addition to the returned investigation evidence forms, 5 different pieces of documentary evidence were submitted from 5 individuals supporting the assertion.

Section 3

3.1 Balance of Evidence and Legislation

Fermanagh & Omagh District Council has statutory duties towards public rights of way as defined under Article 3 of the Access to the Countryside (NI) Order 1983 which are defined below:

“A District Council shall assert, protect and keep open and free from obstruction or encroachment any public right of way; and for this purpose a District Council may institute proceedings in its own name”.

A public right of way is a permanent legal entity and remains in existence unless and until the path is extinguished or diverted due to legal process; *Once a highway, always a highway.*

The process of assertion is about assessing the evidence that is available about the route, the only test the Council is able to apply is “does a public right of way i.e. a right of passage already exist over this line”? If it does the Council has a duty to assert the path.

Although no one statement should be relied on as conclusive proof of the existence of a right of way, it will often be found that three or four statements collected from independent witnesses corroborate with each other and build up a broad picture of the existence of a public right of way.

The evidence statements provided for the Green Road are inconclusive, however when the additional interest groups were contacted, there was a greater number of witnesses claiming the existence of a right of way.

All of the witness statements were checked with consistency with the survey report and the early, large scale editions of Ordnance Survey maps. The Green Road is undoubtedly a marked feature along the majority of the route as a raised embankment but when looked at with the survey report it is clear to see that some sections of the Green Road have not been walked frequently as there is no sign of footfall.

For a public right of way to arise at common law, use must be over a more-or-less consistent line. This does not mean that the route must have been defined on the

ground. If the path is still used regularly the line will often be visible on the ground. If not, the line may still be apparent from the presence of old stiles, gates, boundary walls / fencing or may be shown as a feature on the ground such as an embankment, such as the case with the Green Road.

Not all of the rights that exist with a public right of way will necessarily have been established at the same time, or continued to be exercised up to the present day. The fact that a stile was subsequently put up which restricted use, or that the path was obstructed so that no one could use it or that is simply "fell out of use" does not take away any of the rights that have become established. They continue to exist in law and may be lawfully exercised by the public.

Although a farmer / landowner may believe, for example, that a particular path "has fallen into disuse and is no longer needed today", threatens the security of the farm holdings or conflicts with today's farming practices, he or she has no right to avert or extinguish the path.

If it is found that there is enough evidence to support an assertion, given that the rights already exist in law, any concerns that are raised about the desirability and suitability of the route are not relevant. No matter how sympathetic the Council may be, it has no option but to make the assertion.

Section 4

1.4 Summary

While reviewing evidence the 'Guide to Public Rights of Way and Access to the Countryside' reiterates the importance of continuing to focus on the single question of whether a public right of way can or cannot be shown to exist over a particular route.

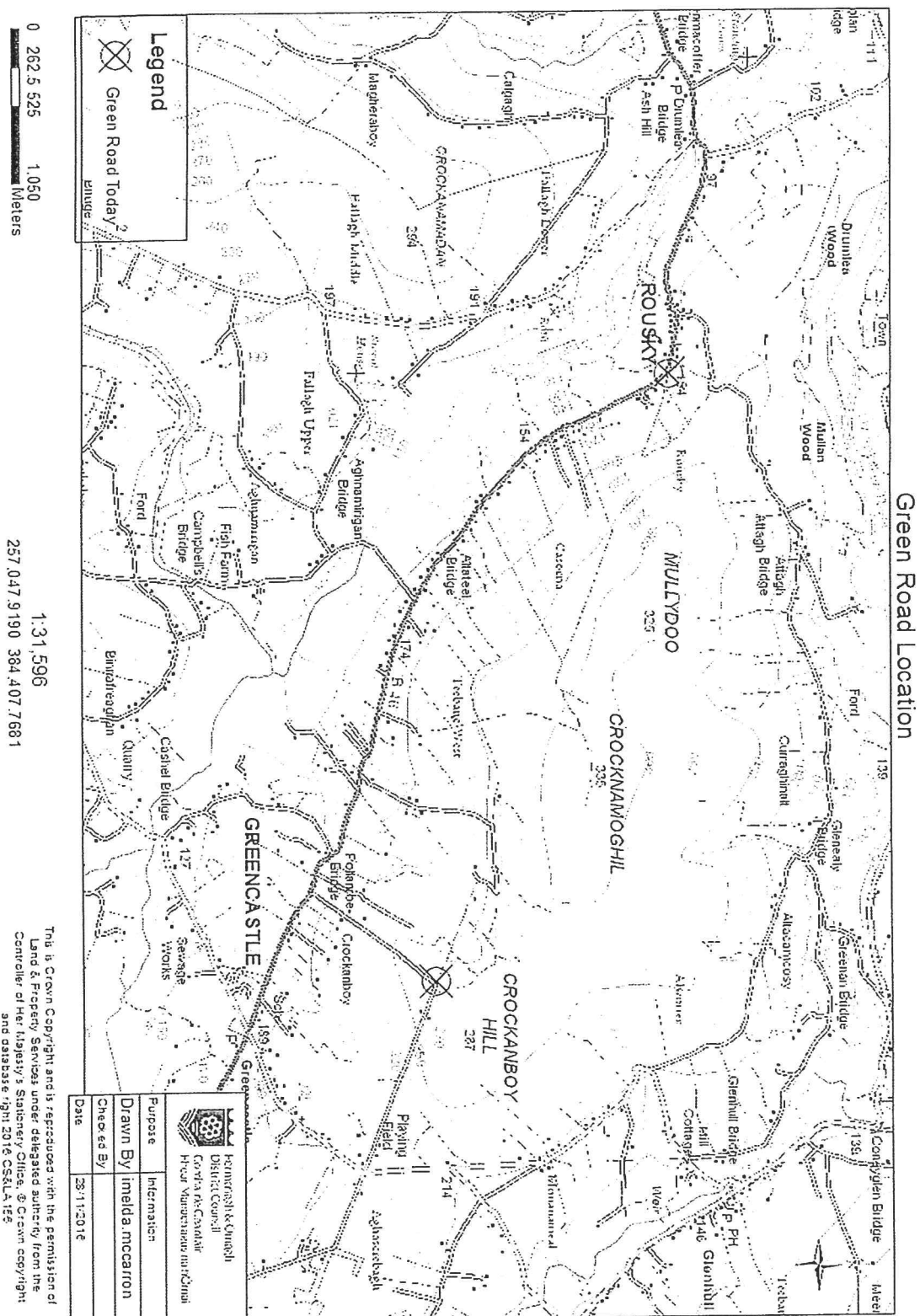
The Council must not be swayed by desirability or suitability of the route, costs of restoring the path, strength of the landowner feelings or any other issues that may be at play.

Taking into consideration the historic maps, the corroborating historical accounts of the origin of the Green Road and the evidence investigation forms, the Countryside Recreation Officer, along with the Council's solicitor has evaluated the evidence, considered the legislation, and on the balance of probability a right of way can be said to exist along the Green Road.

It is recommended that the Council accepts the formal assertion statement and accompanying map to assert the Green Road from Greencastle to Rousky as a public right of way.

APPENDICES

Route of the Green Road, from Rousky to Greencastle under investigation



Imelda McCarron

From: Philip Kingston <Philip.Kingston@derrystabane.com>
Sent: 26 May 2017 14:00
To: Imelda McCarron
Subject: RE: Green Road Assertion

Imelda,

Can I call you on this after 3pm?

PK.

From: Imelda McCarron [mailto:imelda.mccarron@fermanaghomagh.com]
Sent: 25 April 2017 11:12
To: Philip Kingston <Philip.Kingston@derrystabane.com>
Subject: Re: Green Road Assertion

Thanks for coming back to me Philip. Wednesday suits me fine - whatever time suits you best, I can work to that.

Imelda

From: Philip Kingston <Philip.Kingston@derrystabane.com>
Sent: 25 April 2017 10:37
To: Imelda McCarron
Subject: RE: Green Road Assertion

melda,

Might be helpful to meet up on this at some stage. Maybe next week? Would Wednesday morning in Strabane be a possibility?

K.

From: Imelda McCarron [mailto:imelda.mccarron@fermanaghomagh.com]
Sent: 24 April 2017 14:20
To: Philip Kingston <Philip.Kingston@derrystabane.com>
Subject: Green Road Assertion

i Philip,

any thanks

Imelda

*Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council*

*T: 0300 303 1777
M: 07702 919 798
E: imelda.mccarron@fermanaghomagh.com*

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Imelda McCarron

From: Philip Kingston <Philip.Kingston@derrystrabane.com>
Sent: 30 May 2017 16:07
To: Imelda McCarron
Subject: FW: URGENT - FOD Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]
Attachments: Signed letter to Philip Kingston - 03685898.pdf
Importance: High

Imelda,

Philip.

From: :
Sent: 30 May 2017 15:47
To: Philip Kingston <Philip.Kingston@derrystrabane.com>
Cc: 'imelda.mccarron@fermanaghomagh.com' <imelda.mccarron@fermanaghomagh.com>
Subject: URGENT - FODC and - Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]
Importance: High

Mr Kingston

Your Client: Fermanagh and Omagh District Council
Your Client:
Investigation in respect of Green Road, Greencastle, Omagh

We refer to the above matter and enclose our letter of even date for your urgent attention.

Yours faithfully

would like to

by us.

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Imelda McCarron

From: ..
Sent: 31 May 2017 09:29
To: Imelda McCarron
Subject: Green Road

Sent from my iPa. Dear Mrs mc Carron,

Thank you for sending the results of the survey on the Green Road .

We are very disappointed and concerned about the decision on its status as a "Public Right of Way". Our farm and home are situated alongside the road in question, and we would be most concerned about the implications of having the public walking or indeed on horseback so close to the farm and house. Our privacy would be compromised, and litigation would be a huge worry as there are animals in the surrounding fields.

We would also like to know if the Council is planning to use the rate payers money for the upkeep of a road that is really not of any good worth or use . So therefore we strongly oppose any plan to open the "Green Road" to the public.

Yours sincerely. .

Imelda McCarron

From: Clarissa Beacom
Sent: 31 May 2017 14:58
To: Imelda McCarron
Subject: Phone Message

Please call _____ as: disagrees with the greedroad at rouskey, on her land. Worried about insurances. Number is _____

Thanks,

Clarissa Beacom
Community, Health and Leisure
Fermanagh and Omagh District Council
0300 303 1777 ext: 21101

Fw: Green Road

:

Thu 01/06/2017 12:48

To: Robert Gibson <robert.gibson@fermanaghomagh.com>;

Cc:

 1 attachment (1 MB):

UH -Green Road 1 June.pdf;

Robert

Please see below, another query re the Green Road. Below has been our stock response to recent queries. However I am attaching a copy of a report in today's Ulster Herald which comments on the late Council position.

Response

A report has been brought to Council regarding the assertion of the alleged Public Right of Way between Rousky and Greencastle. Council officers will be contacting landowners in due course regarding the decision and so is not in a position to comment further at this stage.

Member Services Officer

Tel: 0300 303 1777

Ext 20204

Email:

From: '

Sent: 01 June 2017 11:59

To:

Subject: Green Road

Hi Peter,

My name is [redacted] used to work at Mid Ulster Mail and now moved down to Belfast Live and the Daily Mirror.

I am working on a wee story about the Green Road right of way, and was hoping for the official council statement please.

Has the decision to uphold right of way been ratified by the full council - or will this happen in June?

And also, I was wondering how many people/ groups wrote to the council and gave evidence in support of keeping the Green Road a right of way?

Would you also have the number of objections handy please?

Hoping to turn this around today, so hoping you can help.

Also, has the council any evidence of the mass rock near the road?

Kind regards,

Reporter
Belfast Live and Daily Mirror
Tel: 0:
Mob:
Twitter: @

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is held at the Silverbirch Hotel recently are, front, from left: Patricia
ett, Eleanor Lydon, Marjorie Greening and Jean Knox.

JB2

Historic Greencastle route declared as 'Public Right of Way'

BY ALAN RODGERS

a.rodgers@ulsterherald.com

AN HISTORIC route which passes through land earmarked for work by Dalradian Gold in Greencastle has been officially declared a public right of way.

The 'Green Road' is believed to have been used by Hugh O'Neill when he travelled from Tullaghoge to Rathmullan during the Flight of the Earls in 1607.

Records also show it on a variety of maps as an old coach road dating back to the 1700s.

Now officials from Fermanagh and Omagh District Council have made the decision to declare it as a 'right of way' after being approached on the issue by local residents last year.

In correspondence sent to people in the area, the council says they have taken into account historic maps, corroborating historical accounts of the origin of the Green Road and other investigations within the local community.

"On the balance of probability a right of way can be said to exist along the Green Road," they said. "It is recommended that the council accepts the formal assertion statement to assert the Green Road from Greencastle to Rouskey as a public right of way."

A spokesperson for Greencastle Community Voices welcomed the decision.

"We had been told that the Green Road did not exist as a public right of way and that the people wouldn't be able to use it, if plans for a goldmine here went ahead," they said.

"But the investigations by Fermanagh and Omagh District Council confirm what people in Greencastle and Rouskey knew all along - that the Green Road is an integral part of our local heritage and is a Public Right of Way."

"This decision means that local people will be able to proceed along the Green Road, even if the land through which it passes is earmarked for mining operations by Dalradian Gold."

A spokesperson for Dalradian said they had "no comment" to make on the decision by the council.

A separate application for the abandonment of the nearby Mullydoo Road is still being considered by the Department for Infrastructure.

magh hosts obus rally



Sadie Calvert, Isa Henderson and Margaret Courtts. Back, from left:
ek Tyney, Edwin Dunlop and Elizabeth Henderson.

JB3

ASPIRE

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ack Programme



Graduation

Kevin Penrose, son of John and Rosanna Penrose, Aghyaran who graduated with a Bachelor of Arts Degree with Honours in Sports Develop-

Imelda McCarron

From: Clarissa Beacom
Sent: 01 June 2017 13:14
To: Imelda McCarron
Subject: Phone Message

Imelda,

Please call , re: Greenroad on

Thanks,

Clarissa Beacom
Community, Health and Leisure
Fermanagh and Omagh District Council
0300 303 1777 ext: 21101

Imelda McCarron

From: Peter Donaghey
Sent: 01 June 2017 15:34
To: Imelda McCarron
Subject: Fw: Green Road
Attachments: UH -Green Road 1 June.pdf

Imelda

Attached is the report from today's Ulster Herald as discussed.

Peter

Peter Donaghey
Member Services Officer
Tel: 0300 303 1777
Ext 20204

Email: peter.donaghey@fermanaghomagh.com



Those who were present at the Silverbirch Hotel recently are, front, from left: Patricia Bennett, Eleanor Lydon, Marjorie Greening and Jean Knox.

JB2

Omagh hosts robust rally



Those present at the Silverbirch Hotel recently are, front, from left: Sadie Calvert, Isa Henderson and Margaret Coutts. Back, from left: Derek Tyney, Edwin Dunlop and Elizabeth Henderson.

JB3



Access to Success. Progression. Inclusion. Recognition. Employment

Track Programme

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BY ALAN RODGERS
a.rodgers@ulsterherald.com

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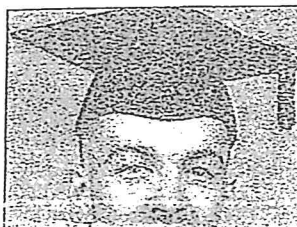
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A spokesperson for Dalradian said they had "no comment" to make on the decision by the council.

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Graduation



Kevin Penrose, son of John and Rosanna Penrose, Aghyaran who graduated with a Bachelor of Arts Degree with Honours in Sports Develop-

Imelda McCarron

From: Creea McManus
Sent: 01 June 2017 16:21
To:
Cc: Philip Kingston; Imelda McCarron; ;
Subject: ATI: 884/17 - URGENT - FOI - Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]
Attachments: Signed letter to Philip Kingston - 03685898.pdf
Importance: High

Reference: ATI 884/17

Thank you for your email of 30 May 2017.

Your request has been allocated reference number ATI 884/17.

Your request shall be dealt with as soon as possible and you will be issued with a response no later than 27 June 2017.

Regards

Creea

Creea McManus
PA to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

Tel: 0300 303 1777 Ext 21175
Email: creea.mcmanus@fermanaghomagh.com

Imelda McCarron

From: Google Alerts <googlealerts-noreply@google.com>
Sent: 03 June 2017 08:53
To: Imelda McCarron
Subject: Google Alert - ulster herald dalradian

Google Alerts

ulster herald dalradian


24 June 2017 10:53 AM

NEWS


Greencastle route set to be declared 'Right of Way'

The Ulster Herald

AN HISTORIC route which passes through land earmarked for work by Dalradian Gold in Greencastle has been officially declared a public right of way ...

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URGENT
BY EMAIL ONLY
Mr Philip Kingston
Derry and Strabane District Council

Our Ref: KLB\RM\48638-28
Your Ref:
Date: 1 June 2017

Dear Mr Kingston

Your Client: Fermanagh and Omagh District Council
Our Client: I
Investigation in respect of alleged public right of way at Greencastle, Omagh

We refer to our previous correspondence and have now had an opportunity to review further the original correspondence which our client received from your above named client.

We await hearing from you with regard to the disclosure sought and written confirmation with regard to the extension in time and we look forward to positive responses in respect of the requests made.

It is, however, important to put on record our client's fundamental concerns regarding how this investigation has been conducted to date.

The process adopted to date has resulted in a resolution by your client under "confidential business" and has been unfair and lacking in transparency. Specifically:-

- (1) There has been no opportunity to consider, much less respond to, the contentions of other parties;
- (2) Further material has been sought by your client, and evaluations made upon that material and weight ascribed to it, without any disclosure of that material to any of the interested parties, and without affording the interested parties the opportunity to comment upon it;
- (3) The document prepared by the officer refers to that material, and reaches a conclusion upon it that appears to have been followed by your client without interrogation or further inquiry. Such inquiry would have included, *inter alia*, seeking comments upon the robustness of the information from interested parties;
- (4) We are concerned that the methodology or approach taken and recommended to the members, insofar as the same is disclosed in the report that is available, demonstrate an incorrect approach to the legislative process, the issues and considerations that are at play;
- (5) There is no clarity or transparency in the process thus far that has resulted in a judgment having been formed and a recommendation made to members;

- (6) Given the conduct of the process to date, there has not been a fair hearing and nor has the basic common law requirement to hear the other side been fulfilled;
- (7) The decision taken requires our client and other interested landowners to seek to persuade the members to a different approach without a clear understanding of what the members were actually advised and what material or considerations were presented to the members; such an approach cannot be sustained.

In light of the errors in approach made to date, it is imperative that those are corrected by the process going forward. For the reasons set out above, it is imperative that information and evidence is furnished to interested parties for comment, and only then should the matter be brought to Council for a proper, robust and lawful consideration. We await conformation of the process that will be adopted henceforth.

In the circumstances, you will appreciate that our client otherwise reserves its position with regard to these important matters.

Given the foregoing, we also request disclosure of all material which was disclosed to the Council members when this matter was considered under confidential business.

We look forward to hearing from you.

Yours faithfully

Copy to: Imelda McCarron, Fermanagh and Omagh District Council (by email only)

Imelda McCarron

From: Tracy Hunter
Sent: 05 June 2017 11:57
To: Imelda McCarron
Cc: Peter Donaghey
Subject: Clarification form of words

Hi Imelda

Following our conversation just now re article in last week's Herald re Green Road, please find below form of words used for clarification previously which you can amend to fit. Hope this helps.

Many thanks

Tracy

-----Amended / final clarification agreed with Ulster Herald -----

On Thursday, January 19 the Ulster Herald published an article 'Council accused of turning deaf ear to firefighter's concerns'.

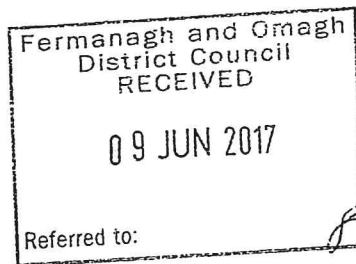
The article stated that Fermanagh and Omagh District Council 'ignored the content' of a letter sent by the Fire Brigades Union, which had offered to make a presentation to elected representatives over its concerns on changes to weekend cover at Omagh Fire Station.

We would like to clarify that the council did not ignore the content of the letter, and did reply to the Fire Brigades Union explaining the reasons as to why a presentation would not be facilitated, namely that the council had already discussed and agreed its response to the consultation on the changes at a meeting on 10 February 2016 and offered to share this response with the Fire Brigades Union.

-----FODC clarification issued to newspaper-----

On Thursday 19 January 2017 the Ulster Herald printed an article 'Council accused of turning deaf ear to firefighter's concerns' pg. 19, which said that the Council ignored the content in a letter sent to them by a local firefighter about the NI Fire and Rescue Service (NIFRS) consultation regarding the downgrading of fire stations. In the letter the firefighter advised that the Fire Brigades Union was available to present to the Council about the consultation and reminded the Council of the consultation's closing date if it wished to submit a response.

We would like to point out that the Council did not ignore the content of the letter. The letter from the firefighter was received by the Council on 12 February 2016, two days after the Council's Policy and Resources Committee had considered the NIFRS consultation document and had agreed to submit a response stating the Council's position. The Council responded to the firefighter's letter, acknowledging receipt of his letter dated 11 February and advised that the Council had already considered the NIFRS consultation document. The letter also stated that the Council would be submitting a response to the NIFRS consultation by the 7 March 2016 deadline and that the Council would share its response with the Fire Brigades Union after 7 March 2016 if they so wished.



8th June, 2017.

Dear Mrs. McLarron,

I am writing in response to your communication dated the 22nd May, '17 and received on the 24th May '17.

I wish to make the following points:-

1) You asked for comment by the 2nd June, '17 which, in my opinion, is much too short a time span as it does not give sufficient time to digest the contents of your communication and compose a considered response. This, as I am sure you are aware, is an extremely busy time of the year for farmers and time is at a premium.

2) The reason the "Green Road" was at a time a public right of way is due to the fact that it was the only highway between Rousky and Greenacres as the present Crochanboy Road did not exist then. Over time the "Green Road" became obsolete as farm dwellings were sited lower down the whole valley and a new road - now known as Crochanboy Road - was constructed. This is now the public highway and public right of way between Rousky and Greenacres.

3) Furthermore the "Green Road" to which you refer in your communication was not the only "Green Road" that was between Rousky and

2

pre-dated the one to which you refer and sections of this older "Green Road" are still intact and very visible even to this day. This older "Green Road" followed much the same line as the later one only it was lower down the valley. It too ran through my land and indeed all the other farms between Rouskey and Greentastle.

If your logic is correct, this older "Green Road" is also a public right of way which means that those public rights of way - and possibly more - run through my farm i.e. Crookanoy Road, the "Green Road" in question and the older one which I have mentioned.

Surely the situation becomes ludicrous! All it would take - if your logic is correct - is for some more "concerned residents" to contact the council action - and if this were to happen, using the same principles which you applied in your present justification, this older "Green Road" would also be classified as a Public Right of Way!!

Has common sense any role to play in all of this?
I await your detailed reply.

Yours sincerely,

P.S. There are two addresses

Your Ref
Our Ref Green Road PRow
Date 12 June 2017
Email Imelda.mccarron@fermanaghomagh.com



Fermanagh & Omagh
District Council
Comhairle Ceantair
Fhear Manach agus na hÓmaí

Brendan Hegarty
Chief Executive

Response posted 22/06/17.
(R)

Dear

RE: GREEN ROAD ALLEGED PUBLIC RIGHT OF WAY

I write to you in response to your correspondence received on 09 June 2017 and wish to make the following comments.

1. I take on board your comment regarding the time frame for responses. You will understand that it is necessary to put a guide end date for any consultation. However, as this is an ongoing and complex matter, comments are welcome from landowners at any stage.
2. Your account of the historic Green Road as the only highway between Rousky and Greencastle corroborates with the evidence gathered by Council and I wish to note; as per guidelines for the Access to the Countryside (NI) Order 1983, a public right of way is a permanent legal entity and remains in existence unless and until the path is extinguished or diverted due to legal process. As it stands, Fermanagh and Omagh District Council do not have record of any evidence of the historic Green Road being extinguished.
3. Using the above point, in theory yes it is possible that there are numerous, unaccounted for public rights of way running throughout the Northern Ireland countryside, however Council must deal objectively with cases as and when they arrive. Furthermore, the process of asserting a public right of way is a complex one which is not based solely on any one piece of evidence but rather a range of substantiating evidence.
4. As Fermanagh and Omagh District Council is now recognised as one organisation, I welcome mail to either address and it will reach me accordingly.

I trust I have answered all of your queries satisfactorily, however should you wish to make further comment please do not hesitate to contact me.

Yours sincerely,

Imelda McCarron
Countryside Recreation Officer

Imelda McCarron

From: Philip Kingston <Philip.Kingston@derrystrobane.com>
Sent: 13 June 2017 16:57
To: Imelda McCarron
Subject: RE: URGENT - FOD Investigation in respect of alleged PROW, Greencastle, Omagh [ID=48638-28]

Will you be about for long? I'm in a pdh in the chamber at the minute.

PK.

Sent from Mail for Windows 10

From: Imelda McCarron
Sent: 13 June 2017 16:55
To: Philip Kingston
Subject: Re: URGENT - Investigation in respect of alleged PROW, Greencastle, Omagh [ID=48638-28]

Enniskillen

From: Philip Kingston <Philip.Kingston@derrystrobane.com>
Sent: 13 June 2017 16:54
To: Imelda McCarron
Subject: RE: URGENT - Investigation in respect of alleged PROW, Greencastle, Omagh [ID=48638-28]

melda,

I'm in the Enniskillen office at the minute. Are you there or in Omagh?

K.

ent from Mail for Windows 10

rom: Imelda McCarron
ent: 13 June 2017 16:51
o: Philip Kingston
bject: Re: URGENT - Investigation in respect of alleged PROW, Greencastle, Omagh [ID=48638-28]
importance: High

Philip,

I am aware Creea has given the other correspondence for
we are working on it but do we need to reply to this letter?

an FOI reference number and we

anks

Imelda

From: k>
Sent: 01 June 2017 16:05
To: Philip Kingston
Cc: Imelda McCarron
Subject: RE: URGENT - Investigation in respect of alleged PROW, Greencastle, Omagh [ID=48638-28]

Mr Kingston

Please see attached correspondence. I look forward to hearing from you.
Regards

ould like to

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f

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Imelda McCarron

From: noreply@fermanaghmagh.com
Sent: 14 June 2017 10:09
To: Imelda McCarron
Attachments: doc00955220170614090838.pdf

TASKalfa 3051ci
[00:17:c8:06:bc:cf]

Your Ref KLB\RM\48638-28
Our Ref IMcC/PK/GreenRoadPRoW
Date 14 June 2017
Email Imelda.mccarron@fermanaghmagh.com



Fermanagh & Omagh
District Council
Comhairle Ceantair
Fhear Manach agus na hÓmaí

Brendan Hegarty
Chief Executive

Dear

RE: Investigation in respect of alleged public right of way at Greencastle, Omagh

Thank you for your letter of the 1 June 2017. Your comments are noted.

The requested documentation will be dealt with as part of the previously furnished FOI request which will be responded to by the 29 June 2017.

We confirm Council will allow a reasonable period thereafter for you to consider the documentation before any further action is taken.

Should you require anything further in the meantime, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Imelda McCarron'.

Imelda McCarron
Countryside Recreation Officer

Our Ref: JF/GG/CV5672

Your Ref:

Date: 14th June, 2017

F.A.O. IMELDA McCARRON
Countryside Recreation Officer,
Fermanagh & Omagh District Council,
The Grange
Mountjoy Road
Omagh
County Tyrone

Re; My Client: _____ ;
Lands @ Rouskey

Dear Madam,

I have been instructed by the above named in relation to your letter dated 22nd May, 2017. From same it appears that you intend to take steps to classify the "green road" as a public right-of-way. I have noted the contents of your report which appears to only be conclusionary and does not provide any substantiating documents in relation to the comments made therein. For example reference is made to historical Maps etc. which have not been furnished. In any event historical Maps would not be sufficient to establish a public right-of-way and what the Council must be satisfied of is that the public right-of-way has continued without interruption up to present date. It is my instructions that the right-of-way, if it ever existed, has long since been abandoned.

Secondly the wish and desire of the locality to re-establish this public right-of-way is a consideration that should not form part of the decision making process. I therefore call upon the Council to furnish to me evidence that this public right-of-way remains in use up to present day and thereafter I will seek further instructions from my Client. If that is not produced and steps are taken to try and establish a public right-of-way my Client will have no alternative but to seek injunctive relief from the Court.

Given the significant public concern in this matter it is my view that the Council should give consideration to establishing a public inquiry into the matter.

Please therefore treat this letter as a formal objection to the Council's proposal and I await hearing from you.

Yours faithfully,

Your Ref JF/GG/CV5672

Our Ref IMC/PK/GreenRoad

Date 15 June 2017

Email Imelda.mccarron@fermanaghmagh.com



Fermanagh & Omagh
District Council

Comhairle Ceantair
Fhear Manach agus na hÓmaí

Brendan Hegarty
Chief Executive

Dear

RE: Green Road Correspondence

I write to you in response to your correspondence received on 14 June 2017 and wish to make the following comments;

1. I accept your comments that the report issued to landowners on 22 May 2017 was only conclusionary but you will appreciate due to Data Protection matters, not all of the information can be released at this stage. Landowners were contacted to inform them of the process and were furnished with the information publically available to date. The Green Road has to date not legally being asserted and due to the complexity of the process it is not likely to be formally asserted in the near future, if at all, depending on how the investigation proceeds.
2. Your reference to 'historical maps not being sufficient to establish a public right of way' is indeed correct, however I would wish to note; in the summary report issued to your client on 22 May 2017 reference has been made to "a varied body of evidence" being "collected from a number of sources in order to clarify if a public right of way does exist over the Green Road".
The report also makes reference to "returned investigation evidence forms" and "5 difference pieces of documentary evidence". Here I would refer you to my previous point regarding not being able to furnish landowners with full details at present due to Data Protection issues. This may change depending on legal advice and landowners will be duly notified if this is the case.
3. Within your correspondence you state "secondly the wish and desire of the locality to re-establish this public right of way is a consideration that should not form part of the decision making process".
Under Access to the Countryside (NI) Order 1983 local Councils have a duty to assert, protect and keep open public rights of way. However, before Council can decide whether to assert a route, it first must be satisfied, through a process of investigation, that the route is indeed a public right of way.

In assessing the evidence that is available to each route, the only test that Council is able to apply is "does a right of way – i.e. a right of passage – already exist over this line"? If it does Council has a duty to assert the path. Council is not swayed by desirability or suitability of the route, costs of restoring the path, strength of the landowner feelings or any other factors that may be at play.

4. With regard to your request for Council to furnish you with evidence that this public right of way remains in use up to the present day, I wish to note; not all of the rights that exist with a public right of way will necessarily have been established at the same time, or continue to be exercised to the present day.

The fact that a stile was subsequently put up which restricted use. Or that the path simply fell out of use, does not take away any of the rights that have become established. They continue to exist in law and may be exercised by the public.

Given the sensitivity of the assertion process, Fermanagh and Omagh District Council is keen to establish positive relationships with all landowners and stakeholders for the good of all parties. I trust this response has answered your queries satisfactorily however, should there be any further queries I would welcome comments from you or your client in due course.

Yours sincerely



Imelda McCarron

Countryside Recreation Officer

Philip Kingston <Philip.Kingston@derrystرابane.com>

Fri 16/06/2017 09:46

Green Road

To: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>;

Imelda,

Happy for that to go out but suspect there will be a further request for information that is a little more focused in due course. We can consider further at that stage.

PK.

From: Imelda McCarron [mailto:imelda.mccarron@fermanaghomagh.com]

Sent: 15 June 2017 17:27

To: Philip Kingston <Philip.Kingston@derrystرابane.com>

Subject: I

Philip,

Please see attached a letter received from [REDACTED] on behalf of one of the landowners along the Green Road. I wasn't sure if we should do a detailed response or a holding letter so I have tried to draft a response (also attached).

Please let me know your thoughts.

Thanks

Imelda

From

Sent: 14 June 2017 10:57

To: Imelda McCarron

Subject: I

Note Synopsis: Global - Email to odc on 14.6.17

Note Body:

Note Synopsis: letter e-mailed to odc on 14.6.17

Note Body:

=====

From: Imelda McGarron

Imelda McCarron

From: Imelda McCarron
Sent: 16 June 2017 16:29
To:
Subject:
Attachments: 170615- .pdf

Afternoon

Please see attached correspondence.

Regards
Imelda

From:
Sent: 14 June 2017 10:57
To: Imelda McCarron
Subject: £ d

Note Synopsis: Global - Email to odc on 14.6.17
Note Body:

Note Synopsis: letter e-mailed to odc on 14.6.17
Note Body:

Imelda McCarron

From: Creea McManus
Sent: 16 June 2017 16:27
To: Imelda McCarron
Subject:
Attachments: 170615-I

Creea McManus

PA to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

Tel: 0300 303 1777 Ext 21175
Email: creea.mcmanus@fermanaghomagh.com

Your Ref JF/GG/CV5672

Our Ref IMC/PK/GreenRoad

Date 15 June 2017

Email Imelda.mccarron@fermanaghmagh.com



Fermanagh & Omagh
District Council
Comhairle Ceantair
Fhear Manach agus na hÓmaí

Brandan Hegarty
Chief Executive

Dear Mr

RE: Green Road Correspondence

I write to you in response to your correspondence received on 14 June 2017 and wish to make the following comments;

1. I accept your comments that the report issued to landowners on 22 May 2017 was only conclusionary but you will appreciate due to Data Protection matters, not all of the information can be released at this stage. Landowners were contacted to inform them of the process and were furnished with the information publically available to date. The Green Road has to date not legally being asserted and due to the complexity of the process it is not likely to be formally asserted in the near future, if at all, depending on how the investigation proceeds.
2. Your reference to 'historical maps not being sufficient to establish a public right of way' is indeed correct, however I would wish to note; in the summary report issued to your client on 22 May 2017 reference has been made to "a varied body of evidence" being "collected from a number of sources in order to clarify if a public right of way does exist over the Green Road".
The report also makes reference to "returned investigation evidence forms" and "5 difference pieces of documentary evidence". Here I would refer you to my previous point regarding not being able to furnish landowners with full details at present due to Data Protection issues. This may change depending on legal advice and landowners will be duly notified if this is the case.
3. Within your correspondence you state "secondly the wish and desire of the locality to re-establish this public right of way is a consideration that should not form part of the decision making process".
Under Access to the Countryside (NI) Order 1983 local Councils have a duty to assert, protect and keep open public rights of way. However, before Council can decide whether to assert a route, it first must be satisfied, through a process of investigation, that the route is indeed a public right of way.

In assessing the evidence that is available to each route, the only test that Council is able to apply is "does a right of way – i.e. a right of passage – already exist over this line"? If it does Council has a duty to assert the path. Council is not swayed by desirability or suitability of the route, costs of restoring the path, strength of the landowner feelings or any other factors that may be at play.

4. With regard to your request for Council to furnish you with evidence that this public right of way remains in use up to the present day, I wish to note; not all of the rights that exist with a public right of way will necessarily have been established at the same time, or continue to be exercised to the present day.

The fact that a stile was subsequently put up which restricted use. Or that the path simply fell out of use, does not take away any of the rights that have become established. They continue to exist in law and may be exercised by the public.

Given the sensitivity of the assertion process, Fermanagh and Omagh District Council is keen to establish positive relationships with all landowners and stakeholders for the good of all parties. I trust this response has answered your queries satisfactorily however, should there be any further queries I would welcome comments from you or your client in due course.

Yours sincerely



Imelda McCarron
Countryside Recreation Officer

Imelda McCarron

From: Anne Marie Broderick
Sent: 22 June 2017 16:41
To: Imelda McCarron
Subject: Fw: ATI Panel Mtg - Friday 23 June
Attachments: Signed letter to Philip Kingston - 03685898 (8).pdf; 120617
_Summary_additional_info_Green_Road_investigation (2).docx

Hi Imelda

How are you

could you give me a call in the morning I just wanted to touch base as to where this matter was generally as there is a request in for info and a meeting tomorrow after lunch

man thanks

AM

From: Melissa Little
Sent: 19 June 2017 13:22
To: Celine McCartan; Ian Davidson; Margaret McMahon; Stephen Forrest; Deirdre McSorley; Anne Marie Broderick
Subject: ATI Panel Mtg - Friday 23 June

Hi all,

Further to my invite to the ATI Panel meeting on Friday 23 June, please see attached:

- The Fol request from ... We will be looking at point 5. 'The five pieces of documentary evidence referred to at paragraph 2.1.3 of the report'
- Summary of the five pieces of documentary evidence to be considered.

Regards

Melissa Little
Policy Officer

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghmagh.com
Fax (Townhall): 028 66 322 024



Fermanagh & Omagh
District Council
Comhairle Ceantair
Fhear Manach agus na hÓmaí

Your Ref: KLB\RM\48638-28
Our Ref: ATI 884-17
Date: 23 June 2017
Being dealt with by: Chief Executive
Email: Brendan.hegarty@fermanaghomagh.com

Dear

RE: ATI 884-17

write with reference to your request dated 3 July 2017 for disclosure of the information set out below:

The five pieces of documentary evidence referred to at paragraph 2.1.3 of the report.

In our letter dated 23 June, we give our rationale for withholding the information:

Information volunteered for the Green Road Public Right of Way investigation is withheld under regulation 12 (5)(f) of the Environmental Information Regulations on the basis that disclosure would adversely affect the interests of third parties who were not under any legal obligation to supply the information to the Council.

The public interest in maintaining the exception outweighs the public interest in disclosing the information.

I have reviewed the information detailed above and the outcome of the decision of the Council's Access to Information Advisory Panel decision on 23 June 2017.

In doing so, I have considered the Guidance produced by the Information Commissioner's Office and the case studies referenced within it. I set out the detail of my findings in an Appendix to this letter.

I find that Regulation 12(5)(f) of the Environmental Information Regulations, Interests of the person who provided the information to the Public Authority, has been correctly applied in relation to the five pieces of documentary evidence referred to at paragraph 2.1.3 of the report". Consequently, I uphold the decision to withhold the information requested.

If you wish to appeal against my decision, you should contact the Information Commissioner:

Information Commissioner
Wycliffe House
Water Lane

Wilmslow

Cheshire SK9 5AF

Enquiry/Information Line: Between 09:00 and 17:00 Monday to Friday 0303 123 1113 or 01625
545745

Yours sincerely

Brendan Hegarty
Chief Executive

ATI 884-17

1. Regulation 12(5)(f) of the Environmental Information Regulations states:

12.— (5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—
 (f) the interests of the person who provided the information where that person—
 (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
 (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
 (iii) has not consented to its disclosure.

∴ I note that the Aarhus Implementation Guide suggest that the purpose of the exception is to encourage the voluntary flow of environmental information from third parties to public authorities. The exception can only apply where disclosure would result in an adverse effect on that person's interests. Examples included within the Information Commissioner Offices@ (ICO) Guidance specifically quotes:

Information gathered in consultations and surveys where there was no obligation on people to respond to them, and
 Information supplied voluntarily by environmental groups or lobby groups or individuals interested in the environment.

I consider the information requested to be covered within these two examples.

• In considering the five stage test as recognised by the Information Rights Tribunal in *John Kuschnir v Information Commissioner and Shropshire Council* (EA/2011/0273; 25 April 2012), I have concluded that:

- Would disclosure adversely affect the interests of the person who provided the information to the public authority?

As the Tribunal in the Kuschnir case noted, there is no requirement for the adverse effect to be significant – the extent of the adverse effect would be reflected in the strength of arguments when considering the public interest test.

In this case the information has been provided by individuals acting in a private capacity in a free and frank manner. As in ICO Decision Notice FER0450536, I consider that there would be detriment to their relationships with other parties about whom they supplied information.

- Was the person under, or could they have been put under, any legal obligation to supply the information to the public authority?

All information was supplied on a voluntary basis and they could not have been put under any legal obligation to supply that information.

- Did the person supply the information in circumstances where the recipient public authority, or any other public authority, was entitled to disclose it apart from under the EIR?
 The Council would not be required to disclose the information at the present time under any other legal obligation.

- Has the person supplying the information consented to its disclosure?

In the Guidance previously referenced, the ICO "recognises that there will be instances where, due to its knowledge of the particular circumstances of a case and its overall experience of the context in which the information was provided, the public authority will be able to explain the harm to the provider without such consultation." In this case, I find that the circumstances pertaining to this request have resulted in an effective working relationship between the Council and the originators of the information. As such, I am able to determine that the people involved do not wish the information to be provided at this time.

- Does the public interest in maintaining the exception outweigh that in disclosure?
I recognise that the Environmental Information Regulations requires a presumption in favour of disclosure in certain circumstances. This has been evidenced by the release of substantial pieces of evidence to date in response to three separate requests from or on behalf of Dalradian Gold Ltd.

I also note the ICO Guidance which says that "a particular disclosure may harm the relationship between the third party and the public authority and may undermine the ability of the authority to do business with that person, and/or with other parties, in the future."

Avoiding the harm to the interests of the originators of the information is a key element in determining whether the public interest would be served in maintaining the exception. The starting point of the Aarhus Implementation Guide is "that there is an inherent public interest in the prevention of adverse effects on the interests of the third-party provider of information, and the principle of confidentiality. It is also legitimate to consider the public interest in maintaining the voluntary supply of information to public authorities, which would be threatened as a result of the adverse effect to the interests of the third party".

The ICO Guidance continues to say that "in considering the public interest it is legitimate to take into account any harmful effect on a public authority's functions where that results from a reduction in the flow of voluntarily supplied information."

In considering the above, I find that the public interest in maintaining the exception is further strengthened by the fact that disclosure would stem the flow of information supplied to the detriment of the public authority in carrying out either a statutory function, or a regulatory role.

4. In light of the above findings, I formally confirm the decision of the Access to Information Advisory Panel in relation to the decision to withhold "The five pieces of documentary evidence referred to at paragraph 2.1.3 of the report."

Imelda McCarron

From: Margaret McMahon
Sent: 26 June 2017 11:49
To: Imelda McCarron
Subject: Re: ATI 884/17

Hi Imelda

yes please change as appropriate.

Regards

Margaret

Margaret McMahon
Head of Policy and Strategic Services
Fermanagh and Omagh District Council
Townhall
2 Townhall Street
Enniskillen BT74 7BA
Tel (028) 6634 2436
Textphone 1800 0300 303 1777

From: Imelda McCarron
Sent: 26 June 2017 10:01
To: Margaret McMahon; Crea McManus
Cc: Melissa Little
Subject: Re: ATI 884/17

Morning Margaret,

Thanks for sending this one. Just one small change - after point 4 it says Seven additional Public Right of Way Evidence Forms were submitted by landowners
can we change this from landowners to stakeholders please? The additional evidence forms were completed by local people but the don't own land along the route.

Many thanks
Imelda

From: Margaret McMahon
Sent: 26 June 2017 09:53
To: Crea McManus; Imelda McCarron
Cc: Melissa Little
Subject: ATI 884/17

This is the draft letter for sending out - feel free to make changes if you wish.

Regards

Margaret

Margaret McMahon
Head of Policy and Strategic Services
Fermanagh and Omagh District Council
Townhall
2 Townhall Street
Enniskillen BT74 7BA
Tel (028) 6634 2436
Textphone 1800 0300 303 1777



Information Commissioner's Office

Interests of the person who provided the information to the public authority (regulation 12(5)(f))

Environmental Information Regulations

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Introduction

1. The Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities.
2. An overview of the main provisions of the EIR can be found in The Guide to the Environmental Information Regulations.
3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.
4. This guidance explains to public authorities how to apply the exception in regulation 12(5)(f) to protect the interests of the person who voluntarily provided the requested information, where that person was under no legal obligation to supply it, the public authority is not entitled to disclose it (apart from under the EIR) and the person has not consented to disclosure.

Overview

- To refuse environmental information under the exception in regulation 12(5)(f), public authorities will need to establish that:
- the information is not on emissions;
- the interests of the person providing the information to the public authority will be adversely affected by disclosure;
- the person providing information was not under any legal duty to provide it;
- the public authority is not entitled to disclose the information provided;
- the person providing the information has not consented to disclosure; and
- the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Generally where the disclosure of information would harm the interests of the person that provided it and the other requirements within the exception are met, a public authority will owe that person a duty of confidence. The public interest test will then determine whether or not the information should be disclosed.

What the EIR say

5. Regulation 12(5)(f) states:

12.— (5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

(f) the interests of the person who provided the information where that person—

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure

6. As with all EIR exceptions, regulation 12(5)(f) is qualified. Therefore, even if the exception is engaged, the authority must go on to apply the public interest test set out in regulation 12(1)(b). It can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information.
7. Regulation 12(2) specifically states that a public authority shall apply a presumption in favour of disclosure.
8. Regulation 12(9) provides that the exception is not available for information on emissions.

9. Regulation 12(10) provides that for this exception (as well as regulation 12(5)(b) and (d)) the term 'public authority' includes Scottish public authorities.
10. It is important to note that the exception refers to "the interests of the **person** who provided the information...". The word "person" is not restricted to an individual and also includes legal persons such as companies.

General principles of the exception

11. The Aarhus Implementation Guide suggests that the purpose of the exception is to encourage the voluntary flow of environmental information from third parties to public authorities. The starting point must always be to consider whether disclosure would adversely affect the interests of the third party who provided the information to the public authority. This is because the exception can only apply where disclosure would result in an adverse effect on that person's interests.
12. Environmental information will be voluntarily provided by a third party to a public authority in a variety of circumstances and could be provided by individuals, charities and private companies.
13. Examples include:
 - Information gathered in consultations and surveys where there was no obligation on people to respond to them.
 - Information supplied by whistleblowers.
 - Information supplied voluntarily by environmental groups or lobby groups or individuals interested in the environment.
 - Information provided by companies in pre-planning discussions with planning authorities.
 - Privately-owned papers deposited in an archive.
14. It is possible for an employee of a public authority to provide information to his employer on a voluntary basis. This will usually arise where a staff member volunteers information outside the terms and conditions of their employment and is

therefore 'provided' to the employer authority. For example, if someone voluntarily provided information on a disciplinary matter not relating to their area of work, this is likely to comprise the subjective and personal opinion of the employee which was not made in the usual course of employment, and so would qualify as information provided to the authority.

15. Where information is caught within the scope of the exception, refusal to disclose is only permitted to the extent of the adverse effect. The Information Tribunal illustrated how this applies in practice in the case of Archer v the Information Commissioner and Salisbury District Council (EA/2006/0037, 9 May 2007) concerning a request for the whole of a report. It found that the adverse effect only arose in respect of part of the report and that the cited refusal could not therefore be applied to the whole document.
16. The reference in regulation 12(5)(f) to provision and supply of information means that, for example, jointly negotiated wording in a contract is not within the scope of the exception, as this is not provided or supplied to the public authority by a third party.
17. Although the exception has no direct equivalent in the Freedom of Information Act 2000 (FOIA), the requirement for an adverse effect on the person who provided the information shows that there are similarities with the duty of confidence under section 41 of FOIA. The exception may also apply to information received from external sources, such as lobbyists, which under FOIA would be protected under the formulation and development of government policy exemption (section 35), or the effective conduct of public affairs exemption (section 36).
18. The purpose of the exception, as indicated by the Aarhus Implementation Guide, suggests that there are also similarities with one aspect of the exemption at section 31 of FOIA – where the effect of disclosure has a detrimental effect on the future voluntary supply of information to some public authorities (in particular those with regulatory responsibilities) which, in turn, prejudices the exercise of their functions (section 31(1)(g)). However, the key difference is that for regulation 12(5)(f) to apply there must be an adverse effect to a third party (ie the person who provided the information).

19. The exception does not allow public authorities to neither confirm nor deny (NCND) whether they hold relevant information. Under the EIR, a public authority can only refuse to confirm or deny whether it holds information if to do so would adversely affect the interests referred to in regulation 12(5)(a) (international relations, defence, national security or public safety) and would not be in the public interest. The EIR differ in this respect from FOIA, where most exemptions include NCND provisions.
20. The exception can be broken down into a five-stage test, as recognised by the Information Rights Tribunal in John Kuschnir v Information Commissioner and Shropshire Council (EA/2011/0273; 25 April 2012):
- Would disclosure adversely affect the interests of the person who provided the information to the public authority?
 - Was the person under, or could they have been put under, any legal obligation to supply the information to the public authority?
 - Did the person supply the information in circumstances where the recipient public authority, or any other public authority, was entitled to disclose it apart from under the EIR?
 - Has the person supplying the information consented to its disclosure?
 - Does the public interest in maintaining the exception outweigh that in disclosure?
21. Where the first four stages of the test are satisfied a public authority will owe the person that supplied the information a duty of confidence. The public interest test will then determine whether or not the information should be disclosed.

Adverse effect on the interests of the person who voluntarily provided the information

22. As with all the exceptions in regulation 12(5), the threshold necessary to justify non-disclosure, because of adverse effect, is a high one. The effect must be on the interests of the person who voluntarily provided the information and it must be adverse.
23. In considering whether there would be an adverse effect in the context of this exception, a public authority needs to identify

harm to the third party's interests which is real, actual and of substance (i.e. more than trivial), and to explain why disclosure **would**, on the balance of probabilities, directly cause the harm.

24. As the Tribunal in the Kuschnir case noted, there is no requirement for the adverse effect to be significant – the extent of the adverse effect would be reflected in the strength of arguments when considering the public interest test. However, the public authority must be able to explain the causal link between disclosure and the adverse effect, as well as why it would occur.
25. The need to point to specific harm and to explain why it is more probable than not that it would occur reflects the fact that this is a higher test than 'might adversely affect', which is why it requires a greater degree of certainty. It also means that it is not sufficient for a public authority to speculate on possible harm to a third party's interests.

Example

An example of how disclosure would adversely affect the interests of the person(s) who voluntarily provided the information occurs in ICO Decision Notice FER0450536.

The case concerned a request to Forestry Commission England for information on the implications for archaeological sites in the New Forest National Park as a result of actual or planned projects of mire or stream restoration.

The voluntarily supplied information comprised correspondence from an individual acting in a private capacity. This included comments that were made on the assumption that they would remain confidential, which had allowed the private individual's concerns to be shared with the public authority in a free and frank fashion. It was therefore decided that disclosure would adversely affect the interests of the individual because there would be detriment to his relationships with other parties about whom he had supplied information.

Consultation with the person that supplied the information

26. Public authorities should be able to evidence the harm that would arise as a result of disclosure. In many cases this will stem from direct consultation with the person who supplied the information. This is most likely to have been at the time the information was provided. However, as explained in more detail below, there may be instances in which it is necessary to consult the information provider at the time of the request.
27. In situations where a person states that disclosure would harm their interests, but does not articulate the nature of this harm, a public authority will need to enter into discussions with the provider in order to establish whether there is any substance to the concerns expressed. This will allow the authority to decide whether disclosure, at the time of the request, would lead to an adverse effect or not and so whether further consideration of the exception is necessary. It is important to acknowledge the importance that the person providing the information attaches to it and the harm that would be suffered if it was disclosed.

Example

The importance of a public authority being able to supply evidence of the adverse effect on a person who has provided it voluntarily with information in order to be able to engage the exception was shown in [ICO Decision Notice FER0395418](#).

The case concerned a request for environmental reports supplied on a voluntary basis by various organisations to a regional development agency, Advantage West Midlands (AWM). AWM was unable to demonstrate to the Commissioner that any interests of the organisations that had provided the reports would be adversely affected if the information were disclosed. Consequently, the Commissioner determined that regulation 12(5)(f) was not engaged.

28. Whilst consultation with the person who provided the information is encouraged in the majority of cases, the Commissioner recognises that there will be instances where, due to its knowledge of the particular circumstances of a case and its overall experience of the context in which the

information was provided, the public authority will be able to explain the harm to the provider without such consultation.

29. As previously mentioned, a public authority should consider whether any harm to the third party would arise, based on the circumstances at the time of the request. Therefore, where the request is made a significant amount of time after the information was provided and/or the circumstances have changed, it may be necessary (if practically possible) to contact the supplier to seek their views on whether any harm is still likely to arise and if so why. However, the Commissioner does acknowledge that there will be cases where it is clear that detriment still exists without any need to revert to the provider. In all cases, the onus will be on the public authority to demonstrate how disclosure of the requested information would lead to the adverse effect based on the circumstances at the time of the request.

Relationship with other exceptions

30. In considering the potential adverse effect of disclosure on the interests of the information provider, it may be that another exception is more appropriate. For example, disclosure may be harmful to the commercial interests of the information provider, in which case the exception at regulation 12(5)(e) is likely to be more appropriate. However, if the requirements of regulation 12(5)(e) are not met, it is possible that an adverse effect on the provider's commercial interests could fall into regulation 12(5)(f).
31. Risks to the personal safety of someone who has voluntarily provided information may arise as a result of disclosure. In such cases it may be that the exceptions at regulation 12(5)(a), which includes reference to public safety, or regulation 13, which covers personal information, are relevant. A public authority should consider where the main focus of the adverse effect lies; for example, if that focus is the personal safety of the provider then it may well be appropriate to give primary consideration to regulation 12(5)(a).
32. If a public authority can show that disclosure would adversely affect the interests of the information provider, it is then required to show how all three tests set out in subsections (i)-(iii) are satisfied. If any one of these tests is not met, the

public authority cannot withhold the information on the basis of this exception.

33. Where all of the requirements are met, the public authority will have a duty of confidence to the supplier. The Commissioner accepts that where a duty of confidence is established, disclosure would not only harm the provider but also the wider principle of confidentiality. In the context of this exception it is the duty of confidence that supports the free flow of information to public authorities. In the Commissioner's view the greater the harm to the supplier the more significant the damage to the wider principle of confidentiality. This level of harm will be relevant when determining the weight that should be attributed to the arguments in favour of maintaining the exception in the public interest test.

Legal obligation to supply the information (regulation 12(5)(f)(i))

34. The exception is not engaged if there was any legal obligation on the information provider to supply the information to the public authority receiving the request, or any other public authority. Equally, the exception is not engaged if the information provider could have been put under such a legal obligation. Therefore, even if information was not, as a matter of fact, provided under a legal obligation in any particular case, what a public authority must consider is whether the information provider could have been put under such a legal obligation. This is a subtle distinction.

Example

The third party in the Kuschnir case was not under a legal obligation to supply the relevant information (in this case a schedule of works). However, the Tribunal determined that the public authority could have compelled the third party to supply the information by virtue of powers under the Environmental Protection Act 1990. Consequently the exception was not engaged.

35. This also shows how this exception differs to the position under FOIA in relation to the effect on the voluntary supply of information. Under FOIA, even if a public authority could have compelled the third party to supply the information, an

exemption could still be engaged – for example section 31 (law enforcement) or section 33 (audit functions) – with weight attached to the argument that the maintenance of voluntary co-operation was preferable to the use of powers to compel the supply of information.

36. Persons who apply to public authorities for the purposes of obtaining licences, grants and other permissions will submit information as part of the process, which may be environmental in nature. However, despite the fact that the decision to make the application is a voluntary one, once that decision is made there will be certain information that the applicant is legally obliged to provide in order for the application to be processed. Consequently, the test at regulation 12(5)(f)(i) is not met and the exception cannot be applied to such information.
37. In many cases it will be clear that the third party could not have been put under a legal obligation to supply the information.

Example

ICO Decision Notice FS50390500 concerned a request for information to a local authority relating to plans for the development of an area of land. As is usual in cases involving development sites, developers enter into discussions with the planning authority regarding their proposals prior to any formal planning application.

The Commissioner determined that the information requested was provided to the public authority by third parties, ie those companies seeking to develop the land in question. He also decided that, as the developers were under no obligation to enter into negotiations with the public authority, it was clear that the nature of the information and the circumstances in which it was provided mean that it was supplied voluntarily. The Commissioner was also of the view that there were no means available to the public authority by which the developers could be put under a legal obligation to supply the information.

38. The wording of regulation 12(5)(f)(i) refers to “any legal obligation to supply it to that **or any other** public authority”. The Commissioner considers that, when determining whether

the person could have been compelled to provide the information, public authorities must consider their own powers and those of any other obviously relevant public authority. Whether another public authority is relevant will depend upon the context and circumstances in which the information was originally obtained and of the request. For example, there may be situations where two, or more, public authorities are working in partnership, where one public authority holds information that has been supplied by a third party on a voluntary basis, but another public authority has powers to compel the provision of the information. Where the first authority receives a request for the information, it must take account of the fact that another authority has the necessary powers to legally oblige the third party to supply the information. The intention behind this phraseology would seem clear; that it would be inappropriate to be able to claim the exception if, in fact, another public authority has the power to compel provision of the information.

Information shared with other public authorities

39. The reference to any other public authority also means that where information received by one public authority is subsequently passed on (for example, by virtue of a statutory obligation) to another, the receiving authority is likely to be able to rely upon regulation 12(5)(f), provided that it does not have any powers which would have allowed it to compel the original source of the information to supply it. This is to ensure that the free flow of information from the original provider is protected.
40. Where one public authority has passed information on to another, and the receiving public authority is considering regulation 12(5)(f), it is important that they are clear about whose interests they are concerned about. Regulation 12(5)(f) is most likely to apply in relation to the original supplier, but it could also be engaged if the interests of the public authority that passed the information on would be harmed as a result of disclosure and it supplied the material voluntarily. In practice the Commissioner considers that such occasions are likely to be rare as most information would only be forwarded as a result of a legal obligation to share it. In view of this, the focus will usually be on the harm to the original information provider.

Circumstances in which the public authority is entitled to disclose the information provided (regulation 12(5)(f)(ii))

41. Under this limb of the five-stage test it is necessary to consider whether the information was supplied to the public authority in circumstances such that it, or any other public authority, is entitled to disclose it. In practice this means considering whether or not the public authority has a duty of confidence and whether any explicit power permits the public authority to disclose the information in the circumstances. Where the public authority in receipt of the information, or indeed any other public authority, is entitled to disclose the information, the exception will not apply.
42. The Commissioner does not consider that public authorities generally need a specific power to disclose information that they hold. However, where information has been provided by another person, public authorities will only be able to disclose it if there is no duty of confidence or they have a specific power to do so.
43. It is unlikely that a reasonable expectation of confidence will be demonstrable if it is clear that the person who provided the information was aware that the public authority has the power to disclose it and is likely to do so. Even if a public authority is able to demonstrate that a supplier had a reasonable expectation of confidence, the exception will not apply if it has an explicit power to release the information.
44. Where a public authority establishes that it owes the supplier a duty of confidence and there is no specific power to disclose, it does not need to consider whether there would be a public interest defence to any breach of confidence under this limb of the exception. This is different to the section 41 exemption under FOIA because there is no need to establish an actionable breach.
45. On a practical level, as the EIR exception is subject to the public interest test, the balance of the public interest will still be fully considered before any decision on disclosure can be reached. Any prior consideration of a public interest defence could not ultimately change the outcome of the case, and would therefore cause unnecessary duplication. This supports the view that there is no need to consider the public interest

defence as part of the engagement of this limb of the exception.

46. Where a public authority is subject to a statutory provision which prevents it from disclosing information that has been supplied to it voluntarily, this is also likely to satisfy this part of the exception. In other words, the information will probably not have been provided in circumstances where the public authority is entitled to disclose it if a statutory prohibition exists.
47. Regulation 5(6) of the EIR dis-applies statutory prohibitions on disclosure. However, it is not relevant in relation to regulation 12(5)(f). The phrase 'apart from these Regulations' in the exception means that regulation 5(6) should be disregarded. In effect, public authorities must consider whether, outside of the EIR, they would be entitled to disclose. Where a statutory prohibition exists this is likely to be of relevance when determining whether the public authority is under a duty of confidence, as it is likely to influence the reasonable expectations of the information provider about what will be done with the information they supply.

Consent of the person who provided the information (regulation 12(5)(f)(iii))

48. Public authorities must consider whether, at the time a request is made, the person who supplied the information has not consented to its disclosure. This will often be determined at the time the information was supplied. It is a matter of good practice that a public authority should advise the supplier at the time the information is supplied to what uses the information will be put, including any likely disclosures. This should help to establish whether the supplier consents to disclosure and also provide the authority with the opportunity to encourage the supplier to provide such consent.
49. Moreover, as circumstances can alter, it is equally a matter of good practice, where possible, to revert to the supplier following receipt of a request in order to confirm whether or not there is consent to disclose. This links closely to what we have said above concerning how the public authority establishes that there would be detriment to the information provider as a result of disclosure. If a public authority has to consult with the

provider about detriment, it should also take this opportunity to establish whether it has the necessary consent to disclose the information. This will be especially relevant where circumstances have changed since the information was first supplied to the authority.

50. Where there is no duty of confidence and no specific objection to disclosure the Commissioner considers that a public authority could disclose the information even in the absence of specific consent from the information provider. In any event, if there is no duty of confidence it is likely that other aspects of the exception will not be satisfied in order to engage it.

Public interest test

51. Where it is established that disclosure would adversely affect the interests of the person who provided the information to the public authority, and where the three tests in subsections (i)-(iii) are met, a public authority must then go on to carry out a public interest test.
52. In accordance with regulation 12(1)(b), in order to withhold the information from disclosure, a public authority must demonstrate that the public interest in maintaining the exception outweighs the public interest in disclosing the information. Such a public interest test must be carried out against the requirement set out in regulation 12(2) that a public authority shall apply a presumption in favour of disclosure. This means that on occasion a public authority should disclose information even though this would adversely affect the interests of the information provider.
53. Note that if more than one EIR exception applies to the information, it is possible to aggregate (combine) the public interest factors relevant to each exception when considering the public interest test.
54. A public authority must do more than simply assert that the prevention of adverse effects to the interests of third party information providers is in the public interest. It must demonstrate how, in a particular case, such prevention serves the public interest. For example, a particular disclosure may harm the relationship between the third party and the public authority and may undermine the ability of the authority to do

business with that person, and/or with other parties, in the future.

Public interest in maintaining the exception

55. In considering the public interest in maintaining the exception, regard should be had to the extent of the harm to the interests of the person who provided the information to the public authority on a voluntary basis that would result from disclosure. Avoiding that harm will be a factor in favour of maintaining the exception. Whilst there will always be some public interest in preserving trust in a public authority's ability to keep third party information 'confidential', it is the extent and nature of the harm to the individual that will influence the degree to which the principle of confidentiality is damaged and, therefore, the amount of weight attributed to this public interest argument.
56. For example, if the harm caused by disclosure is only minimal, there is likely to be little public interest in maintaining the exception, especially given the presumption in favour of disclosure.
57. In considering the public interest, regard should also be had to the purpose of the exception as indicated by the Aarhus Implementation Guide (referred to above), which is to encourage the voluntary flow of information from private persons to public authorities.
58. The starting point is that there is an inherent public interest in the prevention of adverse effects on the interests of the third party provider of information, and the principle of confidentiality. It is also legitimate to consider the public interest in maintaining the voluntary supply of information to public authorities, which would be threatened as a result of the adverse effect to the interests of the third party. This is not to say that this is a direct equivalent of section 31(1)(g) of FOIA, which specifically refers to prejudice to the functions of a public authority. The focus of the exception in regulation 12(5)(f) is the adverse effect on the third party's interests and the consequent effect on the voluntary supply of information, but in considering the public interest it is legitimate to take into account any harmful effect on a public authority's functions where that results from a reduction in the flow of voluntarily supplied information. There is likely to be such a direct link

because, in most cases, the very reason for a third party providing information is that it relates to the functions of the public authority.

Example

In Mr & Mrs D Wallis v Information Commissioner and Derbyshire County Council (EA/2011/0219; 31 January 2012), the First-tier Tribunal confirmed the link between the disclosure of information which had been supplied voluntarily and the undermining of its future provision. The Council required all the available evidence in order to perform its statutory duties effectively (specifically, duties under the Highways Act in that case), and as such needed to be able to rely on the voluntary supply of information from third parties. Future supply of information would be undermined because the Council would not be able to maintain the necessary confidentiality that the suppliers of the information would expect. By implication, the public interest test also required consideration of the impact on the Council's ability to undertake its statutory highway functions.

The information requested included information held by the Council on any investigations or complaints regarding works the applicants proposed to carry out on their property. The proposed works raised issues about highway rights over the land.

59. In cases such as this, although the starting point in considering the public interest is that disclosure would cause detriment to the provider of the information due to a breach of confidentiality, the crucial factor in strengthening the public interest in maintaining the exception is that disclosure would stem the flow of information supplied to the detriment of the public authority in carrying out a statutory function.
60. Another category of information that is likely to be supplied on a voluntary basis by third parties is statistical data and the results of sample surveys relating to environmental conservation. If the suppliers of such information are concerned about disclosure of the information, such that they are unwilling to provide it in the future, this could have a detrimental effect on the ability of certain public authorities to carry out their regulatory role, which would not be in the public interest. The extent to which the public authority depends on information that is volunteered in order to fulfil a particular

function will be relevant to determining the weight that attaches to this argument. The more critical the information is the greater weight this argument is likely to have.

61. This public interest argument could also apply to information supplied to public authorities voluntarily by lobbyists. However, given that the aim of such groups is to further their own agenda it is unlikely that they would be easily deterred from supplying information. Therefore it is unlikely that a great deal of weight would be attached to this argument.

Public interest in disclosure

62. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in environmental decision-making, all of which ultimately contribute to a better environment.
63. The weight of this interest will vary from case to case, depending on the profile and importance of the issue and the extent to which the content of the information will actually inform public debate.
64. Regulation 12(5)(f) may arise in relation to planning matters, for example where an applicant requests information on pre-planning application discussions between a local authority and a developer. The Commissioner considers that there is a high level of public interest in public participation in planning matters. However, this would have to be balanced against the ability of a local authority to carry out the planning process, something which could be undermined if developers and others become reluctant to engage with local authorities as a result of disclosure.
65. There will also be a strong public interest in disclosing information supplied by scientific and other experts which may contribute to scientific developments. Similarly, scientific information voluntarily provided by experts concerning public health and/or safety may also lead to developments in disease prevention. Such disclosures could also have the wider benefit of increasing public confidence in official scientific advice.

66. There is also public interest in disclosing information provided by lobbyists to show the influence which lobbyists have on public authorities, so that the relationships with such organisations can be understood and to allow others to present counterbalancing views.
67. There may of course be other factors in favour of disclosure, depending on the particular circumstances of the case. These could include accountability for spending public money, the number of people affected by a proposal, any reasonable suspicion of wrongdoing or any potential conflict of interest.

Other considerations

68. Public authorities might also want to consider the following exceptions:
- regulation 12(5)(a) if disclosure would adversely affect international relations, defence, national security or public safety;
 - regulation 12(5)(d) if disclosure would adversely affect the confidentiality of formal proceedings of a public authority; or
 - regulation 12(5)(e) if disclosure would adversely affect the confidentiality of commercial or industrial information.
69. This guidance relates only to the EIR. If the information is not environmental information, the EIR are not relevant and public authorities will instead need to consider exemptions under FOIA. The most relevant FOIA exemptions are likely to be section 31(1)(g) (prejudice to the exercise of a public authority's functions for specified purposes), section 41 (information obtained in confidence) or section 43 (commercial interests).
70. Additional guidance is available on [our guidance pages](#) if you need further information on the public interest test, other EIR exceptions or FOIA exemptions.

More information

71. This guidance has been developed drawing on ICO experience. Because of this, it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.
72. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
73. If you need any more information about this or any other aspect of freedom of information, please contact us: see our website www.ico.org.uk.

Imelda McCarron

From: Melissa Little
Sent: 03 July 2017 16:49
To: Imelda McCarron
Cc: Creaa McManus
Subject: Fw: Request for Disclosure of Information under the Environmental Information Regulations 2004 - Our Client: [8638-28]
Attachments: 20170703

Hi Imelda

See attached letter sent to Brendan from . I just wanted to make you aware, Margaret and I are to have a discussion about it in the morning, I will keep you posted.

Creaa - no need to log on ATI database yet I will catch up with you following discussion with Margaret.

Regards

Melissa Little
Policy Officer

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghomagh.com
Fax (Townhall): 028 66 322 024

From: Margaret McMahon
Sent: 03 July 2017 16:41
To: Melissa Little
Subject: Fw: Request for Disclosure of Information under the Environmental Information Regulations 2004 - Our Client: [8638-28]

Margaret McMahon
Head of Policy and Strategic Services
Fermanagh and Omagh District Council
Townhall
Townhall Street
Enniskillen BT74 7BA
Tel (028) 6634 2436
Extphone 1800 0300 303 1777

From: Brendan Hegarty
Sent: 03 July 2017 16:35
To: Margaret McMahon; Robert Gibson

Subject: Fw: Request for Disclosure of Information under the Environmental Information Regulations 2004 - Our Client: [ID=48638-28]

Robert/Margaret

Please see attached, seek legal advice and action accordingly

Thanks

Brendan

From:

Sent: 03 July 2017 16:13

To: Brendan Hegarty

Subject: Request for Disclosure of Information under the Environmental Information Regulations 2004 - Our Client:

Dear Sir

Please find attached correspondence in relation to the above matter.

Yours faithfully.

would like to

acknowledged by [redacted]

Imelda McCarron

From: Robert Gibson
Sent: 04 July 2017 08:33
To: Creaa McManus
Cc: Imelda McCarron
Subject: Fw: Request for Disclosure of Information under the Environmental Information Regulations 2004 - Our Client: [ID=48638-28]
Attachments:

Creaa

Margaret is leading on this issue with Anne Marie.

regards

Robert

From: Brendan Hegarty
Sent: 03 July 2017 16:35
To: Margaret McMahon; Robert Gibson
Subject: Fw: Request for Disclosure of Information under the Environmental Information Regulations 2004 - Our Client: [ID=48638-28]

Robert/Margaret
Please see attached, seek legal advice and action accordingly
Thanks
Brendan

From:
Sent: 03 July 2017 16:13
To: Brendan Hegarty
Subject: Request for Disclosure of Information under the Environmental Information Regulations 2004 - Our Client: [ID=48638-28]

Dear Sir

Please find attached correspondence in relation to the above matter.

Yours faithfully,

i would like to

Imelda McCarron

From: Creea McManus
Sent: 07 July 2017 08:36
To: Imelda McCarron
Subject: RE: Map Numbers

You're a sta-ar

Sent from my ZTE BLADE A512

On 6 Jul 2017 16:30, Imelda McCarron <imelda.mccarron@fermanaghomagh.com> wrote:

Creea,

RE: info held in Omagh Library for PRoW

1834 maps (Sheet 19)

1908 maps (Sheet 19)

Thanks

*Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council*

T: 0300 303 1777

M: 07702 919 798

E: imelda.mccarron@fermanaghomagh.com

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E: info@fermanaghomagh.com This electronic message contains information from Fermanagh and Omagh District Council which may be privileged or confidential. The information is intended to be for the sole use of the individual(s) or entity named above. If you are not the intended recipient be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this electronic message in error, please notify us by telephone or email (to the number or email address above) immediately.

10/07/2017

Mail – creea.mcmanus@fermanaghomagh.com

ATI884/17

Mon 10/07/2017 11:43

To: Robert Gibson <robert.gibson@fermanaghomagh.com>;

2 attachments (213 KB)

170707-ATI 884-17.docx; 120617_Summary_additional_info_Green_Road_investigation (2).docx;

Robert

I have attached a draft letter to Cleaver, Fulton Rankin. Please ring me if you feel that anything needs to be changed. I have also attached a summary of the information which we are withholding.

The problem in answering some of the questions in point 3 of the Appendix is not giving sufficient details which would effectively release the content of that information.

When you are happy with the content, I can send it on to Philip for his comments/advice as requested by Brendan - Anne-Marie was part of the original decision making panel.

Regards

Head of Policy and Strategic Services
Fermanagh and Omagh District Council
Townhall
Townhall Street
Eniskillen BT74 7BA
Tel (028) 6634 2436
Fax 1800 0300 303 1777

Imelda McCarron

From: Robert Gibson
Sent: 11 July 2017 14:05
To: Diane McCabe
Cc: Imelda McCarron; Creaa McManus
Subject: Re: ' '

Hi Diane,

The minute has now been updated and Imelda McCarron is actioning this.

regards

Robert

From: Diane McCabe
Sent: 10 July 2017 14:34
To: Robert Gibson
Subject: Fw: ' '

Hi Robert,

Please see emails below and provide an update, thanks

Kind regards

Diane McCabe
Clerical Officer
Fermanagh & Omagh District Council
Tel 028 82 256210

From: Robert Gibson
Sent: 31 May 2017 08:26
To: Diane McCabe
Subject: Re: ' '

Hi Diane The minute that I was asked to take through was for a maximum cost of £750. I now see that the invoice is for £900. I will have to get a new minute. Regards Robert

Get [Outlook for iOS](#)

From: Diane McCabe
Sent: Tuesday, May 30, 2017 4:53:59 PM
To: Robert Gibson
Subject: ' '

Hi Robert

Reminder to forward approval for attached invoice from , thanks

Kind regards

Diane McCabe
Clerical Officer
Fermanagh & Omagh District Council
Tel 028 82 256210

From: Diane McCabe
Sent: 16 May 2017 15:39
To: Robert Gibson
Subject: Fw: [REDACTED]

Hi Robert

I believe Sean Kelly forwarded this invoice for your approval any update?

Kind regards

Diane McCabe
Clerical Officer
Fermanagh & Omagh District Council
Tel 028 82 256210

From: Diane McCabe
Sent: 25 April 2017 14:42
To: Sean Kelly
Subject:

Hi Sean

Please see attached invoice and check with Annemarie

Kind regards

Diane McCabe
Clerical Officer
Fermanagh & Omagh District Council
Tel 028 82 256210

Additional Info

Imelda McCarron

Tue 11/07/2017 18:19

To: >

I will attach the information through WeTransfer and if you click the link in the next email it will bring you to a download page whereby the additional information will be accessible. It's too large to send via email. There are 5 attachments;

- 3R1 - is information supplied voluntarily by a local group
- 3R2 - is information which was supplied voluntarily in addition to their 'Investigation Evidence Forms'
- 3R3 - Same as above
- 3R4 - Report funded and submitted voluntarily by local community group
- 3R5 - Report submitted voluntarily by local community group

If you have any problems accessing the documents or have any queries, please give me a call.

Many thanks
Imelda

Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council

0300 303 1777
07702 919 798
imelda.mccarron@fermanaghomagham.com

Fw: ATI884/17

Creea McManus

Thu 27/07/2017 09:58

Green Road

To: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>;

As discussed

Creea McManus

PA to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

Tel: 0300 303 1777 Ext 21175

Email: creea.mcmanus@fermanaghomagh.com

From: Melissa Little
Sent: 26 July 2017 14:20
To: Creea McManus
Subject: Fw: ATI884/17

Regards

Melissa Little
Policy Officer

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghomagh.com
Fax (Townhall): 028 66 322 024

From: Margaret McMahon
Sent: 26 July 2017 14:19
To: Melissa Little
Subject: Fw: ATI884/17

Margaret McMahon
Head of Policy and Strategic Services
Fermanagh and Omagh District Council
Townhall
2 Townhall Street
Enniskillen BT74 7BA

When you are happy with the content, I can send it on to Philip for his comments/advice as requested by Brendan - Anne-Marie was part of the original decision making panel.

Regards

Margaret

Margaret McMahon
Head of Policy and Strategic Services
Fermanagh and Omagh District Council
Townhall
2 Townhall Street
Enniskillen BT74 7BA
Tel (028) 6634 2436
Textphone 1800 0300 303 1777

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03/08/2017

Mail – imelda.mccarron@fermanaghomagh.com

Re: 884/17 - URGENT - FODC and DGL - Investigation in respect of Green Road, Greencastle, Omagh
[ID=48638-28]

Imelda McCarron

Thu 03/08/2017 12:16

9 Attachments (10 MB)

ATI884 - 17 Color Maps Request.zip

Ms

Reference: ATI 884/17

Further to Creea's email below please see attached a copy of the coloured maps as requested. The maps have been referenced to correlate with the original files supplied to you.

This request has now been marked as closed.

Regards
Imelda

From:
Sent: 02 August 2017 15:46
To:
Cc: uk; Imelda McCarron
Subject: Fw: 884/17 - URGENT - FODC and DGL - Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]

All the maps previously supplied will be provided in colour as requested and will be referenced for your convenience.

Imelda McCarron will forward this information to you no later than 22 August 2017. Imelda has advised that she aims to provide this information sooner rather than later and is hoping to have it forwarded early next week.

Regards

Y/A to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

tel: 0300 303 1777 Ext 21175
m:

From: Roisin McCormick <r.mccormick@cfrlaw.co.uk> on behalf of Karen Blair <k.blair@cfrlaw.co.uk>
Sent: 25 July 2017 11:46

Subject: RE: 884/17 - URGENT - FODC and DGL - Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]

Re: eea

Thank you for your response. We wish to have all the maps that have been provided as part of the individual evidence to be supplied to us in colour and also marked as to which evidence forms they relate to.

Look forward to hearing from you.

Regards,

Karen

Karen Blair || Chairman and Director, Cleaver Fulton Rankin || 50 Bedford Street || Belfast || BT2 7FW

028 9027 1320 || k.blair@cfrlaw.co.uk || 028 9024 9096 || www.cfrlaw.co.uk

m:
Sent: 11 July 2017 17:34

s://outlook.office.com/owa/?realm=fermanaghomagh.com&vd=email&path=/mail/&sentime

Re: 884/17 - URGENT - FODC and DGL - Investigation in respect of Green Road, Greencastle, Omagh
[ID=48638-28]

Imelda McCarron

Thu 03/08/2017 12:16

1 Attachment (10 MB)

ATI884 - 17 Color Maps Request.zip

Ms

Reference: ATI 884/17

Further to Creea's email below please see attached a copy of the coloured maps as requested. The maps have been referenced to correlate with the original files supplied to you.

This request has now been marked as closed.

Regards
Imelda

From:
Sent: 02 August 2017 15:46
To:
Cc: "Imelda McCarron"
Subject: Fw: 884/17 - URGENT - FODC and DGL - Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]

All the maps previously supplied will be provided in colour as requested and will be referenced for your convenience.

Imelda McCarron will forward this information to you no later than 22 August 2017. Imelda has advised that she aims to provide this information sooner rather than later and is hoping to have it forwarded early next week.

Regards

A to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

tel: 0300 303 1777 Ext 21175
n

From:
Sent: 25 July 2017 11:46
Subject: RE: 884/17 - URGENT - FODC and DGL - Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]
Rea

Thank you for your response. We wish to have all the maps that have been provided as part of the individual evidence to be supplied to us in colour and also marked as to which fence forms they relate to.

Look forward to hearing from you.

Regards.

n:
Sent: 11 July 2017 17:34

To:
Subject: Re: 884/17 - URGENT - and DGL - Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]

Apologies for the delay in issuing a response to your email of 3 July 2017.

Please see responses below:

The right of way application attached in your email as 'File 1' refers to a number of maps. Some of these have been attached however the 'Taylor and Skinner Maps of 1780' and 'Ordnance Survey Map of 1906' are omitted. Aerial photography is also said to be included but is not attached.

All maps that were submitted with the original submission were included within the PDF attachment. Although referred to there was no Taylor and Skinner Maps submitted. The two Ordnance Survey Maps of 1906 submitted were included.

The reference to the Aerial photography notes that the information is in the Public Records Office – there was no supporting evidence attached.

Taking the Landowner Evidence Forms in numerical sequence, forms 4, 5, 9, 13, 14, 17, 21 are missing.

The numerical references used were to match a database listing the landowners. Landowner Evidence Forms were issued to all landowners on this list however Landowners 4, 5, 9, 13, 14, 17 and 21 did not return the forms supplied to them.

Landowner Evidence Form No. 23 refers to two questionnaires which it is said to attach but these are omitted.

The 'questionnaires' referred to are actually Evidence Forms No. 12 and No. 16.

Redacted Evidence Form 3 refers to a letter of continued evidence which is omitted.

This letter of continued evidence was part of the five pieces of documentary evidence volunteered for the investigation and has been withheld under regulation 12 (5)(f) of the Environmental Information Regulations on the basis that disclosure would adversely affect the interests of third parties who were not under any legal obligation to supply the information to the Council.

All the maps supplied are described as being marked out in colour but only black and white copies are provided.

The scanner used to scan the documents automatically scans in black and white. If you wish for colour scans please indicate which maps and I will arrange for these to be forwarded.

We also note your reference to the maps being available for review at Omagh Library. Please confirm the specific maps referred to in the report to allow us to inspect.

The maps referred to are the 1834 Maps (Sheet 19) and the 1908 Maps (Sheet 19).

Regards

PA to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

Tel: 0300 303 1777 Ext 21175

Email: im

From:
Sent: 03 July 2017 11:18
To:
Subject: RE: 884/17 - URGENT - FODC and DGL - Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]

Thank you for your email and the attached documents. On review we note that the following documents are missing and copies are requested:-

The right of way application attached in your email as 'File 1' refers to a number of maps. Some of these have been attached however the 'Taylor and Skinner Maps of 1780' and 'Ordnance Survey Map of 1906' are omitted. Aerial photography is also said to be included but is not attached.

Taking the Landowner Evidence Forms in numerical sequence, forms 4, 5, 9, 13, 14, 17, 21 are missing.

Landowner Evidence Form No. 23 refers to two questionnaires which it is said to attach but these are omitted.

Redacted Evidence Form 3 refers to a letter of continued evidence which is omitted.

All the maps supplied are described as being marked out in colour but only black and white copies are provided.

We also note your reference to the maps being available for review at Omagh Library. Please confirm the specific maps referred to in the report to allow us to inspect.

We look forward to hearing from you.

Regards

From: [redacted]
Sent: 27 June 2017 16:08
To: [redacted]
Cc: [redacted]; Melinda McCarron
Subject: ATI: 884/17 - URGENT - FODC and DGL - Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]
Importance: High

Reference: ATI 884/17

Please find attached letter and zip file containing supporting documentation in response to your request of 30 May 2017.

This request has now been marked as closed.

Regards

PA to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

tel: 0300 303 1777 Ext 21175
email: creea.mcmanus@fermanaghomagh.com

From: [redacted]
Sent: 01 June 2017 16:21
To: [redacted]
Cc: [redacted]; Melinda McCarron
Subject: ATI: 884/17 - URGENT - FODC and DGL - Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]

Reference: ATI 884/17

Thank you for your email of 30 May 2017.

Your request has been allocated reference number ATI 884/17.

Your request shall be dealt with as soon as possible and you will be issued with a response no later than 27 June 2017.

Regards

PA to Director of Community, Health and Leisure
Fermanagh and Omagh District Council

tel: 0300 303 1777 Ext 21175
email: creea.mcmanus@fermanaghomagh.com

From: [redacted]
Sent: 30 May 2017 15:46
To: Philip Kingston
Melinda McCarron
Subject: URGENT - FODC and DGL - Investigation in respect of Green Road, Greencastle, Omagh [ID=48638-28]

Kingston

Client: Fermanagh and Omagh District Council
Client: Dalradian Gold Limited

<https://outlook.office.com/owa/?realm=fermanaghomagh.com&vd=email&path=/mail/sentitems>

We refer to the above matter and enclose our letter of even date for your urgent attention.

Yours faithfully

Cleaver Fulton Rankin

I'd like to make a donation to Barnardos

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You can donate at our Just Giving page
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You can donate at our Just Giving page
<https://www.justgiving.com/fundraising/Cleaver-Fulton-Rankin3>

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Imelda McCarron

From: Melissa Little
Sent: 24 August 2017 08:44
To: Imelda McCarron
Subject: Redacted Info - ATI 884

ATI 884-17

Hi Imelda

I left a file on your desk yesterday with the redacted report etc., can you take a look through this just so you are aware of what will be released and let me know when you have let the know this is being released before we issue a response.

Regards

Melissa Little
Policy Officer

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghmagh.com
Fax (Townhall): 028 66 322 024

RE: Green Road FOI - Concerned Community

Philip Kingston <Philip.Kingston@derrystabane.com>

Fri 25/08/2017 14:49

Green Road

To: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>;

Thanks Imelda.

From: Imelda McCarron [mailto:imelda.mccarron@fermanaghomagh.com]

Sent: 25 August 2017 14:49

To: Philip Kingston <Philip.Kingston@derrystabane.com>

Cc: Robert Gibson <robert.gibson@fermanaghomagh.com>

Subject: Green Road FOI - Concerned Community

Philip,

I spoke to the Community group in Greencastle this afternoon to inform them that we would be releasing their report to Dalraidan on Tuesday through the Freedom of Information Act. The lady that I spoke to was concerned about releasing this information and is currently seeking legal advice from the group's solicitor.

I will keep you informed if I hear anything further.

Regards
Imelda

*Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council*

T: 0300 303 1777

M: 07702 919 798

E: imelda.mccarron@fermanaghomagh.com

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Green Road Reports

Imelda McCarron

Fri 25/08/2017 15:46

To:

Subject:

Further to the evidence submitted by the group on 16 October 2016 I wish to inform you that Fermanagh and Omagh District Council has received a Freedom of Information request regarding the assertion of the Green Road Public Right of Way.

Under the Environmental Information Regulations 2004 Council is obligated to supply all information that has applied to the assertion of the Green Road, which includes the reports FODC received from the RG Concerned Community Group.

Environmental Information Regulations is disclosable unless an exception applies. In this instance FODC considered in particular, exception 12(5)(f) "Interests of the Person who Provided the information to the Public Authority". This exception may apply but would, in any event, be subject to the Public Interest test. Legal Services has advised; as disclosure of this information, were court proceedings to issue, would be inevitable, it is difficult to see how the Public Interest test could be satisfied by not disclosing the information at this stage.

If you should wish to discuss further please contact myself or Robert Gibson (Director of Community Health and Leisure).

Imelda

Imelda McCarron

Countryside Recreation Officer

Fermanagh and Omagh District Council

0300 303 1777

07702 919 798

imelda.mccarron@fermanaghomagh.com

Imelda McCarron

From: Philip Kingston <Philip.Kingston@derrystabane.com>
Sent: 25 August 2017 18:29
To: Imelda McCarron
Subject: RE: RE: Green Road Reports

Imelda,

I'll try to get a detailed response to this drafted over the weekend and we can discuss in detail on Tuesday morning. There isn't anything in it which concerns me unduly.

PK.

From: Imelda McCarron [mailto:imelda.mccarron@fermanaghomagham.com]
Sent: 25 August 2017 17:56
To: Philip Kingston <Philip.Kingston@derrystabane.com>; Robert Gibson <robert.gibson@fermanaghomagham.com>; margaret.mcmahon@fermanaghimagham.com
Subject: FW: RE: Green Road Reports

Please see response from ' < >

Imelda

Sent from my Windows 10 phone

From: _____
Sent: 25 August 2017 17:43
To: Imelda McCarron
Subject: Fwd: RE: Green Road Reports

Dear Imelda

Thank you for your email today which has been considered and responded to as per the attached.

Kind regards

----- Original message -----

From: Imelda McCarron <imelda.mccarron@fermanaghomagham.com>
Date: 25/08/2017 15:46 (GMT+00:00)
To: _____ >
Subject: Green Road Reports

Further to the evidence submitted by the group on 16 October 2016 I wish to inform you that Fermanagh and Omagh District Council has received a Freedom of Information request regarding the assertion of the Green Road Public Right of Way.

Under the Environmental Information Regulations 2004 Council is obligated to supply all information that has applied to the assertion of the Green Road, which includes the reports FODC received from the

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Should you wish to discuss further please contact myself or Robert Gibson (Director of Community Health and Leisure).

Imelda

*Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council*

T: 0300 303 1777

M: 07702 919 798

E: imelda.mccarron@fermanaghomagh.com

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above) immediately.

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Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council
The Grange
Mountjoy Road
Lisnamallard,
Omagh

By email

Direct tel	Date	25 August 2017
Direct fax	Email	

Dear Imelda

Green Road – Freedom of Information Request

We refer to your email to our client, [redacted], of today's date regarding the Council's proposed disclosure of information relating to its assertion of the Green Road Public Right of Way. We understand that this includes a report produced on behalf of [redacted].

We note that the Council considered the exception to disclose the information under Regulation 12(5)(f) of the Environmental Information Regulations 2004, namely to protect the "interests of the person who provided the information".

Our client strongly objects to the disclosure of the report.

Whilst we would agree that the exception applies to our client, we do not consider that the public interest in maintaining the exception is outweighed by the public interest in disclosing the information. The Council has not set out clearly its reasoning as to why it considers the public interest test is met and in the absence of further clear justification we do not consider that the Council can properly support its view.

The report was produced on behalf of [redacted] and submitted to the Council voluntarily; and its disclosure will have an adverse effect on that group's interests with regard to the preservation of the right of way. In this respect the public interest in disclosure is outweighed by the adverse effect on the Group.

The Council must also consider whether the disclosure is genuinely in the public interest or whether it is merely serving a private interest – if the latter then this strongly weighs against disclosure.

As noted in the relevant guidance issued by the ICO, the "adverse effect" test is similar to the "prejudice" test required under the Freedom of Information Act 2000. The ICO Guidance on the prejudice test notes (at para 24) that *"the fact that a prejudice-based exemption is engaged means that there is automatically some public interest in maintaining it, and this should be taken into account in the public interest test"*. It follows that the Council must apply the same consideration in applying the public interest test in this matter. The existence of an adverse effect must result in the public interest not favouring disclosure in this particular case.

The Council also refers to the likelihood of disclosure "were court proceedings to issue". It is not clear which court proceedings the Council may be referring to, but if the documents are relevant to such proceedings the Council must consider whether disclosure at this stage is premature. Would disclosure have an adverse effect on those proceedings and is the exception under 12(5)(b) ("the course of justice") therefore also engaged? How does the Council apply the public interest to this exception?

As the report was submitted voluntarily to the Council, the intellectual property rights of the document also lie with the Council and the Report's author. Exception 12(5)(c) also applies. The Council has not considered the public interest test with regard to this exception and must do so.

Fundamentally, on the basis of the information provided to date, the Council has not clearly or fully justified its position with regard to its consideration of the public interest test and our clients maintain their strong objection to disclosure. The Council must reconsider its position. Our clients reserve their rights accordingly.

Thank you for your further consideration of this matter and we look forward to your response.

Yours sincerely

Imelda McCarron

From: Melissa Little
Sent: 31 August 2017 14:41
To: Imelda McCarron
Subject: Re: RE: Green Road Reports

Will do Imelda - enjoy your time off ☺

Regards

Melissa Little
Policy Officer

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghmagh.com
Fax (Townhall): 028 66 322 024

From: Imelda McCarron
Sent: 31 August 2017 14:29
To: Melissa Little
Subject: RE: RE: Green Road Reports

Thanks Melissa, can you maybe keep me posted if you hear anything?!

Chat soon

Imelda

Sent from my Windows 10 phone

From: Melissa Little
Sent: 31 August 2017 13:47
To: Imelda McCarron; Margaret McMahan
Subject: Re: RE: Green Road Reports

Hi Imelda

I was speaking to Creea this morning and she advised that Robert is waiting a response from Philip Kingston re this recent correspondence from the community group before issuing the response to the appeal.

Regards

Melissa Little
Policy Officer

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghmagh.com
Fax (Townhall): 028 66 322 024

From: Imelda McCarron
Sent: 31 August 2017 13:41
To: Margaret McMahon
Cc: Melissa Little
Subject: FW: RE: Green Road Reports

Hi Margaret

Thought I'd sent this to you in Friday evening but I see there was a typo in the address. Philip was it draft a response and come back? Have you heard anything? Has the FOI been issued already?

Thanks

Imelda

Sent from my Windows 10 phone

From: Imelda McCarron
Sent: 25 August 2017 17:56
To: Philip Kingston; Robert Gibson; margaret.mcmahon@fermanaghmagh.com
Subject: FW: RE: Green Road Reports

Please see response from Community Group legal team.

Imelda

Sent from my Windows 10 phone

From:
Sent: 25 August 2017 17:43
To: Imelda McCarron
Subject: Fwd: RE: Green Road Reports

7517]

Dear Imelda

Thank you for your email today which has been considered and responded to as per the attached.

Kind regards

----- Original message -----

From: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>

Date: 25/08/2017 15:46 (GMT+00:00)

To: _____

Subject: Green Road Reports

Further to the evidence submitted by the group on 16 October 2016 I wish to inform you that Fermanagh and Omagh District Council has received a Freedom of Information request regarding the assertion of the Green Road Public Right of Way.

Under the Environmental Information Regulations 2004 Council is obligated to supply all information that has applied to the assertion of the Green Road, which includes the reports FODC received from the

Environmental Information Regulations is disclosable unless an exception applies. In this instance FODC considered in particular, exception 12(5)(f) "Interests of the Person who Provided the Information to the Public Authority". This exception may apply but would, in any event, be subject to the Public Interest test. Legal Services has advised; as disclosure of this information, were court proceedings to issue, would be inevitable, it is difficult to see how the Public Interest test could be satisfied by not disclosing the information at this stage.

Should you wish to discuss further please contact myself or Robert Gibson (Director of Community Health and Leisure).

Imelda

*Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council*

T: 0300 303 1777

M: 07702 919 798

E: imelda.mccarron@fermanaghomagh.com

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Imelda McCarron

From: Robert Gibson
Sent: 31 August 2017 09:00
To: Imelda McCarron
Subject: Re: Green Road

Hi Imelda,

I hope that you are doing well.. Sorry for the delay in responding. I was out of the office a lot this last few days. No response from Philip as yet.

Robert

From: Imelda McCarron
Sent: 30 August 2017 10:06
To: Robert Gibson
Subject: Green Road

Hi Robert,

Just wondering did Philip get back to the after
Friday's email?

Thanks
Imelda

Sent from my Windows 10 phone

Imelda McCarron

From: Robert Gibson
Sent: 19 September 2017 14:25
To: Philip Kingston; Imelda McCarron; Creaa McManus
Subject: Re: ATI 994-17 - Request for Disclosure of Information - My Client: [ID=48638-28]

Hi Philip Thank you. Robert

Get [Outlook for iOS](#)

From: Philip Kingston <Philip.Kingston@derrystrabane.com>
Sent: Tuesday, September 19, 2017 10:01:51 AM
To: Robert Gibson; Imelda McCarron; Creaa McManus
Subject: RE: ATI 994-17 - Request for Disclosure of Information - My Client: [ID=48638-28]

Apologies. I thought I had this drafted. I'll try to get a response out to you today. I'll touch base as well.

Regards,
Philip.

From: Robert Gibson [mailto:robert.gibson@fermanaghomagh.com]
Sent: 19 September 2017 08:08
To: Philip Kingston <Philip.Kingston@derrystrabane.com>; Imelda McCarron <imelda.mccarron@fermanaghomagh.com>; Creaa McManus
Subject: Fwd: ATI 994-17 - Request for Disclosure of Information - My Client: [ID=48638-28]

Hi Philip Can you advise please? Robert

Get [Outlook for iOS](#)

From: Robert Gibson [mailto:robert.gibson@fermanaghomagh.com]
Sent: Monday, September 18, 2017 7:22:57 PM
To: Robert Gibson
Subject: RE: ATI 994-17 - Request for Disclosure of Information - My Client: [ID=48638-28]

Mr Gibson

I refer to your email below and look forward to receiving your substantive response or a further update in respect of the delay.
Regards

From: Robert Gibson [mailto:robert.gibson@fermanaghomagh.com]
Sent: 31 August 2017 16:38
To:
Cc:

Subject: ATI 994-17 - Request for Disclosure of Information under the Environmental Information Regulations 2004
- Your Client: [38-28]

Please find attached correspondence in relation to the above.

Regards

Robert Gibson

From:

Sent: 03 July 2017 16:13

To: Brendan Hegarty

Subject: Request for Disclosure of Information under the Environmental Information Regulations 2004 - Our Client:

Dear Sir

Please find attached correspondence in relation to the above matter.

Yours faithfully.

Imelda McCarron

From: Paula Deery <Paula.Deery@derrystrabane.com>
Sent: 21 September 2017 15:57
To: Imelda McCarron
Subject: Re:100040.00002 - Green Road - Freedom of Information Request
Attachments: Draft Letter to f; image001.jpg

Dear Imelda

Re: Green Road – Freedom of Information Request

Please see attached draft response to This may need some minor adjustment and perhaps you would contact me this afternoon to discuss.

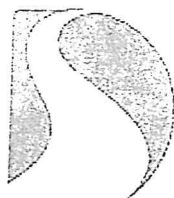
Yours sincerely

Philip Kingston LLB
philip.kingston@derrystrabane.com
Tel. No. (028) 7137 6502

Please respond to Strand Road Office

Enc

Paula Deery
Administrative Assistant (Legal Services)
Derry City & Strabane District Council
98 Strand Road
Derry
BT48 7NN
Tel: (028) 71 253 253 Extn 6762
www.derrystrabane.com



Derry City & Strabane
District Council
Community
Chathair na Gaoir &
Chomhairle na Strátha Búna
Derry City & Strabane
District Council

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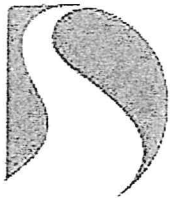
Imelda McCarron

From: Paula Deery <Paula.Deery@derrystrabane.com>
Sent: 22 September 2017 11:51
To: Imelda McCarron
Subject: Re:100040.00002 - Green Road - Freedom of Information Request
Attachments: DRAFT Letter to ; image001.jpg

Imelda

I attach draft letter in word format.

Paula Deery
Administrative Assistant (Legal Services)
Derry City & Strabane District Council
98 Strand Road
Derry
BT48 7NN
Tel: (028) 71 253 253 Extn 6762
www.derrystrabane.com



Derry City & Strabane
District Council
Comhairle
Chathair Dhoire &
Chéantair an tSrátha Báin
Derry Cítie & Strábane
District Council

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Derry City & Strabane
District Council

Comhairle
Chathair Dhoire &
Cheantar an tSratha Báin

Derry Citty & Strabane
Destrick Council

Your Reference: 301R/AR12/102209/00003
Our Reference: 100040.00002/PJK/PRD

20th September 2017

Re: Green Road – Freedom of Information Request

I refer to your letter of 25th August 2017. We note that your client objects to the disclosure of the report. In considering the public interest test in relation to this matter Council has considered that this report was provided to Council in order to support the assertion of the Green Road public right-of-way. Council has taken the view that the report contains information that may justify the assertion of the Green Road as a public right-of-way. You will be aware that the methodology in relation to assessment of public rights-of-way includes the identification of possible witnesses and possible documentary sources of evidence followed by contact and negotiation with affected landowners. If Council is to rely upon the report supplied by, as part of the assertion of the public right-of-way then it must be in a position to discuss that documentation with the affected landowners. Given the interest in having a public right-of-way asserted at the Green Road we would be of the view that any adverse effect in disclosure of the report would be minimal and that the public interest test in favour of disclosure would be met.

You will also be aware that in the event of the Council deciding to assert by resolution the public right-of-way then, if such assertion is opposed, the Council must ask the County Court to vindicate that assertion. Where Council is seeking to rely on the information contained within this report, then its disclosure as part of those proceedings would be inevitable. Council does not believe that such proceedings would be adversely affected by disclosure prior to proceedings. Council notes what you say in relation to intellectual

property/...

2
20th September 2017

property rights and accepts that these lay with _____ and with the reports author. For the reasons indicated in previous correspondence, and as stated above, Council believes that, if the report is to be relied upon in favour of the assertion of the public right-of-way then the public interest test in favour of disclosure of the report is met.

Council notes the views of _____ in relation to the disclosure of the report. Council will reconsider its position in relation to the disclosure of the report should _____ indicate that it does not wish the report to be considered by Council in its assessment of evidence in relation to the assertion of the public right-of-way. If, however, Council is unable to rely on the report then it may well be that Council does not currently have sufficient evidence before it that would justify the assertion of the public right-of-way at the present time. In light of the foregoing we would be grateful if you would confirm your clients position in relation to the report within seven days from the date hereof failing which Council would propose to release the report in response to the environmental information request.

Yours faithfully

Philip Kingston LLB
Lead Legal Services Officer
philip.kingston@denysabane.com
Tel. No. (028) 7137 6502
Please respond to Strand Road Office

Your Ref 301R/AR12/102209/00003
Our Ref 100040.00002/PJK/PRD
Date 22 September 2017
Email Imelda.mccarron@fermanaghomagh.com



Fermanagh & Omagh
District Council
Comhairle Ceantair
Fhear Manach agus na hÓmaí

Brendan Hegarty
Chief Executive

Dear

Re: Green Road – Freedom of Information Request

I refer to your letter of 25 August 2017. We note that your client objects to the disclosure of the report.

In considering the public interest test in relation to this matter, Council has considered that this report was provided to Council in order to support the assertion of the Green Road public right-of-way. Council has taken the view that the report contains information that may justify the assertion of the Green Road as a public right-of-way.

You will be aware that the methodology in relation to assessment of public rights-of-way includes the identification of possible witnesses and possible documentary sources of evidence followed by contact and negotiation with affected landowners. If Council is to rely upon the report supplied by [redacted] as part of the assertion of the public right-of-way then it must be in a position to discuss that documentation with the affected landowners. Given the [redacted] interest in having a public right-of-way asserted at the Green Road, we would be of the view that any adverse effect in disclosure of the report would be minimal and that the public interest test in favour of disclosure would be met.

You will also be aware that in the event of the Council deciding to assert by resolution the public right-of-way, then, if such assertion is opposed, the Council must ask the County Court to vindicate that assertion. Where Council is seeking to rely on the information contained within this report, then its disclosure as part of those proceedings would be inevitable. Council does not believe that such proceedings would be adversely affected by disclosure prior to proceedings.

Council notes what you say in relation to intellectual property rights and accepts that these lay with [redacted] and with the report's author. For the reasons indicated in previous correspondence, and as stated above, Council believes that, if the report is to be relied upon in favour of the assertion of the public right-of-way then the public interest test in favour of disclosure of the report is met.

Council/...

22 September 2017

TLT Solicitors

Council notes the views of GRG Concerned Community Group in relation to the disclosure of the report. Council will reconsider its position in relation to the disclosure of the report should GRG Concerned Community Group indicate that it does not wish the report to be considered by Council in its assessment of evidence in relation to the assertion of the public right-of-way.

If, however, Council is unable to rely on the report then it may well be that Council does not currently have sufficient evidence before it that would justify the assertion of the public right-of-way at the present time.

In light of the foregoing we would be grateful if you would confirm your clients position in relation to the report within seven days from the date hereof failing which Council would propose to release the report in response to the environmental information request.

Yours sincerely

Imelda McCarron
Countryside Recreation Officer

Imelda McCarron

From: Philip Kingston <Philip.Kingston@derrystrabane.com>
Sent: 11 October 2017 10:49
To: Imelda McCarron
Subject: RE: Green Road - Freedom of Information Request

Imelda,

From: Imelda McCarron [mailto:imelda.mccarron@fermanaghomagh.com]
Sent: 11 October 2017 08:53
To: Philip Kingston <Philip.Kingston@derrystrabane.com>
Cc: Melissa Little <melissa.little@fermanaghomagh.com>
Subject: Re: Green Road - Freedom of Information Request
Importance: High

Philip

Just a quick follow up on my email from 5th October - was there ever anything drafted or do we need to issue response to this?

Thanks
Imelda

From: _____
Sent: 03 October 2017 12:56
To: Imelda McCarron
Cc: Philip Kingston; Robert Gibson; Melissa Little; Margaret McMahon
Subject: RE: Green Road - Freedom of Information Request

Dear Imelda

Please find attached our response to your letter of 22 September. I would be happy to discuss this further if required.

Kind regards

From: Imelda McCarron [<mailto:imelda.mccarron@fermanaghomagh.com>]

Sent: 22 September 2017 16:50

To:

Cc: Philip Kingston; Robert Gibson; Melissa Little; Margaret McMahon

Subject: Green Road - Freedom of Information Request

Afternoon,

Please find attached correspondence regarding the above. Should you have any queries, please contact me.

Best Regards
Imelda

*Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council*

T: 0300 303 1777

M: 07702 919 798

E: imelda.mccarron@fermanaghomagh.com

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Imelda McCarron

From: Philip Kingston <Philip.Kingston@derrystrabane.com>
Sent: 11 October 2017 12:25
To: Imelda McCarron
Subject: RE: Green Road - Freedom of Information Request

Imelda,

Your wording is better.

PK.

From: Imelda McCarron [mailto:imelda.mccarron@fermanaghomagh.com]
Sent: 11 October 2017 12:09
To: Philip Kingston <Philip.Kingston@derrystrabane.com>
Subject: Re: Green Road - Freedom of Information Request

From: Philip Kingston <Philip.Kingston@derrystrabane.com>
Sent: 11 October 2017 10:49
To: Imelda McCarron
Subject: RE: Green Road - Freedom of Information Request

Imelda,

Happy to discuss.

PK.

From: Imelda McCarron [mailto:imelda.mccarron@fermanaghomagh.com]
Sent: 11 October 2017 08:53
To: Philip Kingston <Philip.Kingston@derrystrabane.com>

From: Imelda McCarron [mailto:imelda.mccarron@fermanaghomagh.com]

Sent: 22 September 2017 16:50

To: ,

Cc: Philip Kingston; Robert Gibson; Melissa Little; Margaret McMahon

Subject: Green Road - Freedom of Information Request

Afternoon

Please find attached correspondence regarding the above. Should you have any queries, please contact me.

Best Regards
Imelda

*Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council*

T: 0300 303 1777

M: 07702 919 798

E: imelda.mccarron@fermanaghomagh.com

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Imelda McCarron

From: Melissa Little
Sent: 11 October 2017 15:50
To: Imelda McCarron
Subject: Re: Green Road - Freedom of Information Request

Hi Imelda

Just for info, I have sent this on to Margaret to see what her thoughts are in relation to this, it is lingering on...

Regards

Melissa Little
Policy and Strategic Services

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghomagh.com
Fax (Townhall): 028 66 322 024

From: Imelda McCarron
Sent: 11 October 2017 08:53
To: Philip Kingston
Cc: Melissa Little
Subject: Re: Green Road - Freedom of Information Request {

Philip

Just a quick follow up on my email from 5th October - was there ever anything drafted or do we need to issue response to this?

Thanks
Imelda

From: A
Sent: 03 October 2017 12:56
To: Imelda McCarron
Cc: Philip Kingston; Robert Gibson; Melissa Little; Margaret McMahon
Subject: RE: Green Road - Freedom of Information Request

Dear Imelda

Please find attached our response to your letter of 22 September. I would be happy to discuss this further if required.

Kind regards

Your Ref 301R/AR12/102209/00003

Our Ref 100040.00002/PJK/PRD

Date 11 October 2017

Email Imelda.mccarron@fermanaghmagh.com



Fermanagh & Omagh
District Council
Comhairle Ceantair
Fhear Manach agus na hÓmaí

Brendan Hegarty
Chief Executive

Dear [redacted]

Re: Green Road – Freedom of Information Request

Thank you for your letter of 3rd. inst. Whilst this is not the only information held by the Council, in the absence of this information the Council feels that it would further delay the assertion process as there would be insufficient evidence at this time.

Having considered all matters, the Council does not feel that it would be appropriate to withhold from landowners any of the information upon which it would rely as part of an assertion process and further that exception 12(5)(b) would not be made out.

Please therefore confirm at the earliest opportunity that your client is prepared to allow the Council to rely on the report as part of the assertion process.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Imelda'.

Imelda McCarron
Countryside Recreation Officer

Our ref 301R/AR12/102209/00003
Your ref

Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council
The Grange
Mountjoy Road
Lisnamallard,
Omagh

By email

Direct tel	Date	3 October 2017
Direct fax	Email	

Dear Imelda

Green Road – Freedom of Information Request

Thank you for your letter of 22 September 2017 in response to our letter of 25 August.

We note the Council's view on the public interest test and disclosure of the Green Road report. In our view it is disingenuous to claim that non-disclosure of the report may prejudice the assertion of the PROW since it is not the only source of information that is held by the Council and non-disclosure at this time does not in itself prevent the assertion process from continuing.

We also note that the Council seeks to justify its position in relation to negotiation with landowners as part of the assertion process. We recognise that the Red Book guide recommends that affected landowners should receive as much information as possible in order to seek to minimise objections to the assertion. However the Red Book makes it clear that this is a matter for the Council to consider on balance – assessing the likelihood of the landowner being placed at an advantage in any subsequent court proceedings against the likelihood of the landowner conceding to the PROW at an early stage. Significantly this does not create a broader public interest outside of that limited group of people since the consideration is limited to affected landowners and even for those parties there is not a strict requirement to disclose as it is a matter for the Council to weigh in the balance its broader consideration of the assertion process.

In any event we consider that the exception under 12(5)(b) ("the course of justice") must also be engaged given that court proceedings are clearly being contemplated. The guidance in the Red Book as referenced above further emphasises the fact that disclosure is specifically related to the legal process of assertion. This confirms in our view that exception 12(5)(b) must be engaged.

We would ask that you address the above points in any response – in particular our client needs to understand whether the person making the FOI/EIR request is a landowner or a third

party. Either way, the Council's consideration of the public interest test must recognise that the assertion process requires a specific balancing exercise between the public interest and the Council's duty to assert a PROW – and the specific legal process that this entails - where the PROW has been clearly identified and the Council has stated that it intends to assert that right of way, as is the case here.

Our client will then be in a better position to consider its response. At this stage our client still resists any disclosure of the report under the FOI/EIR but refutes the claim by the Council that this will prejudice the PROW assertion process.

Thank you for your further consideration of this matter and we look forward to your response.

Yours sincerely

Imelda McCarron

now
pose
next
sent
To:

From: Melissa Little
Sent: 20 November 2017 11:42
To: Imelda McCarron
Subject: Re: Green Road - Freedom of Information Request

Hi Imelda

I am not aware of this info being released. Margaret is out at SMT in Omagh this morning, but I will check with her if she knows anything more and what we should do next when she gets back.

Regards

Melissa Little
Policy and Strategic Services

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghomagh.com
Fax (Townhall): 028 66 322 024

From: Imelda McCarron
Sent: 17 November 2017 19:51
To: Melissa Little; Margaret McMahon
Subject: FW: Green Road - Freedom of Information Request

Melissa

Please see email from below. Has this information been released yet?

Thanks
Imelda

Sent from my Windows 10 phone

From: _____
Sent: 16 November 2017 13:13
To: Imelda McCarron
Cc: Philip Kingston
Subject: RE: Green Road - Freedom of Information Request

Imelda

My apologies for not responding on this matter sooner. Further to your letter of 11 October our client is content that the Green Road report is disclosed to landowners potentially impacted by the proposed assertion of the Public Right of Way.

I trust this is of assistance.

Kind regards

[illegible]

Imelda McCarron

From: Robert Gibson
Sent: 21 November 2017 11:51
To: Philip Kingston; Imelda McCarron
Subject: Fw: Green Road - Freedom of Information Request

Hi Philip and Imelda,

Have we released the information now?

Regards

Robert

From: Imelda McCarron
Sent: 16 November 2017 17:31
To: Robert Gibson
Subject: FW: Green Road - Freedom of Information Request

Robert

FYI

Imelda

sent from my Windows 10 phone

From: Robert Gibson
Sent: 16 November 2017 13:13
To: Imelda McCarron
Cc: Philip Kingston
Subject: RE: Green Road - Freedom of Information Request [517]

Imelda

My apologies for not responding on this matter sooner. Further to your letter of 11 October our client is content that the Green Road report is disclosed to landowners potentially impacted by the proposed assertion of the Public Right of Way.

Trust this is of assistance.

Kind regards

†
From: Imelda McCarron <imelda.mccarron@fermanaghomaggh.com>
Sent: Wednesday 11 October 2017 16:15
To:
Cc: Philip Kingston; Robert Gibson; Melissa Little; Andrea McCourt
Subject: Re: Green Road - Freedom of Information Request

Afternoon

Please find attached correspondence regarding the above. Should you wish to discuss further please contact me.

Kind Regards
Imelda

From: .
Sent: 03 October 2017 12:56
To: Imelda McCarron
Cc: Philip Kingston; Robert Gibson; Melissa Little; Margaret McMahon
Subject: RE: Green Road - Freedom of Information Request !

Dear Imelda

Please find attached our response to your letter of 22 September. I would be happy to discuss this further if required.

Kind regards

From: Imelda McCarron [<mailto:imelda.mccarron@fermanaghomaggh.com>]
Sent: 22 September 2017 16:50
To: /
Cc: Philip Kingston; Robert Gibson; Melissa Little; Margaret McMahon
Subject: Green Road - Freedom of Information Request

Afternoon

Please find attached correspondence regarding the above. Should you have any queries, please contact me.

Best Regards
Imelda

Imelda McCarron

From: Melissa Little
Sent: 21 November 2017 12:19
To: Creea McManus
Cc: Imelda McCarron
Subject: Fw: Green Road - Freedom of Information Request

Thanks Creea, I have just missed Margaret she has just left on a half day.

I will update her with this info in the morning before issuing anything, she may want Andrea to respond. I will keep you both posted.

Regards

Melissa Little
Policy and Strategic Services

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghomagh.com
Fax (Townhall): 028 66 322 024

From: Creea McManus
Sent: 21 November 2017 12:07
To: Melissa Little
Subject: Re: Green Road - Freedom of Information Request

Melissa

ust to confirm that Robert has not released this information - please go ahead and release it.

Robert has asked that you also copy/blind copy Philip Kingston in for information purposes.

ould you also please copy me and Imelda in - or forward the email after it is issued.

hanks

reea

Creea McManus
A to Director of Community, Health and Leisure
ermanagh and Omagh District Council

al: 0300 303 1777 Ext 21175
mail: creea.mcmanus@fermanaghomagh.com

From: Melissa Little
Sent: 21 November 2017 11:55:54
To: Creea McManus
Subject: Fw: Green Road - Freedom of Information Request [

Regards

Melissa Little
Policy and Strategic Services

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghmagh.com
Fax (Townhall): 028 66 322 024

From: Imelda McCarron
Sent: 17 November 2017 19:51
To: Melissa Little; Margaret McMahon
Subject: FW: Green Road - Freedom of Information Request

Melissa

Please see email from below. Has this information been released yet?

Thanks
Imelda

Sent from my Windows 10 phone

From:
Sent: 16 November 2017 13:13
To: Imelda McCarron
Cc: Philip Kingston
Subject: RE: Green Road - Freedom of Information Request [17]

Imelda

My apologies for not responding on this matter sooner. Further to your letter of 11 October our client is content that the Green Road report is disclosed to landowners potentially impacted by the proposed assertion of the Public Right of Way.

I trust this is of assistance.

Kind regards

! [.com](#)

From: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>

Sent: Wednesday, 11 October 2017 16:15

To:

Cc: Philip Kingston; Robert Gibson; Melissa Little; Andrea McCourt

Subject: Re: Green Road - Freedom of Information Request

Afternoon

Please find attached correspondence regarding the above. Should you wish to discuss further please contact me.

Kind Regards
Imelda

From: ,

Sent: 03 October 2017 12:56

To: Imelda McCarron

Cc: Philip Kingston; Robert Gibson; Melissa Little; Margaret McMahon

Subject: RE: Green Road - Freedom of Information Request '

Dear Imelda

Please find attached our response to your letter of 22 September. I would be happy to discuss this further if required.

Kind regards

From: Imelda McCarron [<mailto:imelda.mccarron@fermanaghomagh.com>]

Sent: 22 September 2017 16:50

To: .

Cc: Philip Kingston; Robert Gibson; Melissa Little; Margaret McMahon

Subject: Green Road - Freedom of Information Request

Afternoon .

Please find attached correspondence regarding the above. Should you have any queries, please contact me.

Best Regards
Imelda

*Imelda McCarron
Countryside Recreation Officer
Fermanagh and Omagh District Council*

T: 0300 303 1777

M: 07702 919 798

E: imelda.mccarron@fermanaghomagh.com

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Imelda McCarron

From: Robert Gibson
Sent: 28 November 2017 18:48
To: Imelda McCarron
Subject: Fwd: ATI 994-17 - Request for Disclosure of Information - My Client: [ID=48638-28]

Hi Imelda Has this not been auctioned? Robert

Get [Outlook for iOS](#)

From:
Sent: Tuesday, November 28, 2017 2:54:26 PM
To: Robert Gibson; Philip Kingston
Subject: RE: ATI 994-17 - Request for Disclosure of Information - My Client: [ID=48638-28]

Robert

I refer to my email below. I should be grateful if you would confirm the position. This relates to an information request made on 3 July.

From: Robert Gibson [mailto:robert.gibson@fermanaghomaggh.com]
Sent: 30 October 2017 09:35
To: Philip Kingston
Subject: RE: ATI 994-17 - Request for Disclosure of Information - My Client: [ID=48638-28]

Dear

Thank you for your email. May I apologise for the delay in responding. We hope to provide a final response shortly and will as soon as possible.

Regards

Robert

From: >
Sent: 19 October 2017 10:44
To: Philip Kingston; Robert Gibson
Subject: RE: ATI 994-17 - Request for Disclosure of Information - My Client: [ID=48638-28]

Philip and Robert

I refer to my email below and should be grateful if you would confirm the position.
Regards

Imelda McCarron

From: Google Alerts <googlealerts-noreply@google.com>
Sent: 28 November 2017 09:08
To: Imelda McCarron
Subject: Google Alert - ulster herald dalradian

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NEWS

Planning application submitted for Tyrone goldmine The Ulster Herald

A planning application for the construction of a goldmine and 'associated infrastructure' in Mid Tyrone for the Canadian company, **Dalradian**, has been submitted. The firm, whose plans for the Sperrins have been the subject of much controversy during the past few years, claims it will create 350 jobs ...



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Imelda McCarron

From: Melissa Little
Sent: 29 November 2017 09:03
To:
Cc: Imelda McCarron; Creea McManus
Subject: Fw: ATI 994-17 - Request for Disclosure of Information under the Environmental Information Regulations 2004 - Your Client: 1 [ID=48638-28]
Attachments: SurveyGreenRoad2.pdf; SurveyGreenRoad1.pdf

ATI 884-17

Further to your letter of appeal dated 03 July 2017 regarding ATI 884-17, please find attached the documentary evidence as requested.

Please note, personal details redacted as per Section 40 of the Freedom of Information Act applies – Personal Information protected by the Data Protection Act 1998.

Regards

Melissa Little
Policy and Strategic Services

Telephone: 0300 303 1777 ext 21186
Email: melissa.little@fermanaghmagh.com
Fax (Townhall): 028 66 322 024

From:
Sent: 03 July 2017 16:13
To: Brendan Hegarty
Subject: Request for Disclosure of Information under the Environmental Information Regulations 2004 - Our Client:

Dear Sir

Please find attached correspondence in relation to the above matter.

Yours faithfully.

Imelda McCarron

From: Google Alerts <googlealerts-noreply@google.com>
Sent: 02 December 2017 07:02
To: Imelda McCarron
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NEWS

Groups join forces to lodge formal complaint

The Ulster Herald

"Many in the Greencastle community and beyond are of the belief that meaningful information was not made available to the impacted community by Dalradian Gold NI, and in particular the probability of harmful toxins being used and created in the processing systems and waste mountain," said Cormac ...



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