

Phone Message - Margaret McMahon

Mon 30/04/2018 16:55

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

Robert,

Margaret has asked that you call her either today or tomorrow to confirm appeal letter: Green Road.

Thanks,

Clarissa Beacom

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

Tel: 0300 303 1777 **Extension:** 21101

W: fermanaghomagh.com

Twitter & Facebook: fermanaghomagh

Fw: _____

Imelda McCarron

Tue 01/05/2018 10:34

To: _____

 19 attachments (32 MB)

File 1.pdf; File 2.pdf; File 3.pdf; File 4.pdf; File 5.pdf; File 6.pdf; File 7.pdf; LandOwnerConfirmationEvidenceForms.pdf; 231116_Field_Survey_Report.pdf; ATI 884-17 Evidence Form 1.pdf; ATI 884-17 Evidence Form 2.pdf; ATI 884-17 Evidence Form 3.pdf; ATI 884-17 Evidence Form 4.pdf; ATI 884-17 Evidence Form 5.pdf; ATI 884-17 Evidence Form 6.pdf; ATI 884-17 Evidence Form 7.pdf; Detailed Map.pdf; 180321 - ATI1223 18 - Appendices.zip; FOI Response Table.odt;

From: Imelda McCarron
Sent: 04 April 2018 16:15
To:
Cc: Clarissa Beacom
Subject:

Dear _____

The Access to Information Panel met previously to consider a request for the same information as you requested, and after careful consideration the Panel concluded that to deal with your entire request would exceed the time limit (18 hours). However, we are able to forward the attached documents, PRow Evidence Forms, Detailed Survey of alleged PRow, Redacted evidence forms, detailed map of the alleged PRow, meeting notes and diary entries for meetings held between Dalradian representatives and FODC staff, which have been released for previous freedom of information requests and the most recent meeting notes dated 26.02.2018.

The remainder of the information is being withheld under the Freedom of Information Act 2000 Section 12(1) Requests where the cost of compliance exceeds the appropriate limit – Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

If you are unsatisfied with this response, you may request an internal review of the decision by writing to Brendan Hegarty, Chief Executive, Fermanagh and Omagh District Council, Townhall, 2 Townhall Street, Enniskillen, Co Fermanagh, BT74 7BA.

Kind 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

RE: }

Wed 02/05/2018 12:10

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

Imelda

Received with thanks.

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

Sent: 01 May 2018 13:24

To:

Subject: Fw:

I trust the files went through OK. It occurred to me that you won't have seen my original reply if the email didn't go through so I've forwarded the text for reference.

Best regards

Imelda

From: Imelda McCarron

Sent: 01 May 2018 10:33

To:

Subject: Fw:

From: Imelda McCarron

Sent: 04 April 2018 16:15

To:

Cc: Clarissa Beacom

Subject:

Dear

The Access to Information Panel met previously to consider a request for the same information as you requested, and after careful consideration the Panel concluded that to deal with your entire request would exceed the time limit (18 hours). However, we are able to forward the attached documents, PRow Evidence Forms, Detailed Survey of alleged PRow, Redacted evidence forms, detailed map of the alleged PRow, meeting notes and diary entries for meetings held between Dalradian representatives and FODC staff, which have been released for previous freedom of information requests and the most recent meeting notes dated 26.02.2018.

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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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Fw: FOIs-Green Road

Clarissa Beacom

Thu 03/05/2018 14:53

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

 1 attachments (665 KB)

doc02555420180503104853.pdf;

Imelda,

I wasn't sure if you copied the Fols so please see attached. I have drafted an acknowledgement letter for you to sign tomorrow. Please note the response deadline is 31 May 2018.

Thanks,

Clarissa Beacom

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

Tel: 0300 303 1777 **Extension:** 21101

W: fermanaghomagh.com

Twitter & Facebook: fermanaghomagh

From: Clarissa Beacom
Sent: 03 May 2018 14:17
To: Freedom of Information
Subject: Fw: FOIs-Green Road

Andrea,

Please see attached 3 FOI letters re: the Green Road. Imelda has spoke to _____ at the Company and she has said they were happy that all 3 were logged under one FOI.

Clarissa Beacom

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

Tel: 0300 303 1777 **Extension:** 21101

W: fermanaghomagh.com

Twitter & Facebook: fermanaghomagh

From: noreply@fermanaghomagh.com <noreply@fermanaghomagh.com>
Sent: 03 May 2018 11:48
To: Clarissa Beacom
Subject:

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

Our Ref:

Your Ref:

Date:

24th April, 2018

Ms. Imelda McCarron
Countryside Recreation Officer
Fermanagh & Omagh District Council
The Grange
Mountjoy Road
Omagh
BT79 7BL

Dear Madam

Re:

We have been consulted by the above named in connection with the investigation process regarding the alleged public right of way on the Green Road between Rousky and Greencastle. In order to advise our client more fully we require a copy of all recorded information held by you in connection with this matter in accordance with the Freedom of Information Act.

We look forward to hearing from you.

Yours faithfully

Our Ref:

Your Ref:

Date:

24th April, 2018

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Countryside Recreation Officer
Fermanagh & Omagh District Council
The Grange
Mountjoy Road
Omagh
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We look forward to hearing from you.

Yours faithfully

19/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

Fw: Public Right of Way Investigation re green road, Rousky to Greencastle

Clarissa Beacom

Thu 03/05/2018 15:08

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

Imelda,

Please see below; this FOI is now currently still opened.

Clarissa Beacom

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

Tel: 0300 303 1777 **Extension:** 21101

W: fermanaghomagh.com

Twitter & Facebook: fermanaghomagh

From: Freedom of Information

Sent: 01 May 2018 09:44

To: Clarissa Beacom

Subject: Fw: Public Right of Way Investigation re green road, Rousky to Greencastle

From: Freedom of Information

Sent: 01 May 2018 09:41 AM

To:

Subject: Re: Public Right of Way Investigation re green road, Rousky to Greencastle

Dear

When you have received your response, please inform me whether you are content and wish to close this request or if you would like it to be considered.

Kind regards

Andrea

From:

Sent: 27 April 2018 02:46 PM

To: Freedom of Information

Subject: RE: Public Right of Way Investigation re green road, Rousky to Greencastle

Andrea

The request of 16 April is for a subset of the information in respect of which the review is made. If the review is successful, there will be no need for this request to be dealt with separately but should it be refused, it will need to be considered, as it relates to a more specific body of information.

Regards

..

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

Sent: 27 April 2018 14:08

To:

Subject: Public Right of Way Investigation re green road, Rousky to Greencastle

Dear

Thank you for your request dated 16 April 2018.

I understand you made a request dated 12 March 2018

which was responded to and subsequently you made an appeal.

I believe the information requested on 16 April 2018 has been covered in your earlier request, which is currently being dealt with following receipt of your appeal.

If you are requesting other information that has not being dealt with, please come back to me detailing exactly what information you are requesting.

Kind regards

Andrea

From: I
Sent: 16 April 2018 05:11 PM
To: Freedom of Information
Subject: FW: Public Right of Way Investigation re green road, Rousky to Greencastle]

In respect of the above investigation, we write formally under the Freedom of Information Act 2000 to request copies of the following:-

all correspondence to and from the Countryside Recreation Officer not already disclosed to us between July 2017 and January 2018.
the Countryside Recreation Officer's internal file notes and attendance notes from January 2016, not already disclosed to us between July 2017 and January 2018.
Regards

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s Charity of the Year 2017 is Barnardos. If you would like to make a donation to Barnardos please se

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THIS email IS FROM a lawyer. It IS confidential and may be privileged. If you are not the intended recipient please noti

Please be aware of an increased risk of cyber crime and fraud which uses email interception. When we send bank details by

19/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

Fw:

Robert Gibson

Tue 08/05/2018 08:45

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

1 attachment (449 KB)

image2018-05-04-165422.pdf;

Good morning Imelda,

Please discuss with me.

Regards

Robert

From:
Sent: 04 May 2018 17:00
To: Philip Kingston
Cc: Robert Gibson
Subject:

Philip

Please see attached correspondence.
Regards

are The Legal 500 2018 Northern Ireland Firm of the year. We are also celebrating our 125th year.

, Charity of the Year 2017 is Marie Curie. If you would like to make a donation to Barnardos please

You can donate at our Just Giving page
<https://www.justgiving.com/fundraising/mariecurie>

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This email has been scanned for viruses. It is the responsibility of the recipient to ensure that onward transmission, if any, is to the correct email address.

BY EMAIL ONLY

Mr Philip Kingston
Derry and Strabane District Council

Our Ref:
Your Ref:
Date: 4 May 2018

Dear Mr Kingston

Our Client:

Your Client: Fermanagh and Omagh District Council

In the matter of a decision of Fermanagh and Omagh District Council to assert a public right of way for pedestrian use

We refer to your letter dated 17 April, in response to our letter dated 7 March.

We note at paragraph 6.2 of your letter the assertion that the Council remains "happy" to consider any comments which our client may have on the materials which it has received and that it will be "happy" to consider any additional information which our client may supply before finalising its decision in relation to this matter.

Your response and the approach to our concerns do not adequately reflect the steps that our client has taken to ensure that the process, being undertaken by the Council, was fairly conducted. We had received unequivocal assurances from you and Mr Gibson at our meeting on 26 February, which Ms McCarron also attended, that our client would be given adequate time to prepare and submit materials, and both you and Mr Gibson both stated that your client did not have a 'dog in this fight'. Despite these and earlier clear assurances, we have seen repeated attempts to place materials for decision before the Council together with conflicting correspondence to the other interested landowners.

We are further disappointed by your client's failure to engage with the correspondence dated 28 February 2018 (and subsequent reports to Committee, including most recently 10 April) which was the subject of our letter dated 7 March, and explain how that letter, signed by your client's Chief Executive was prepared and issued.



INVESTORS
IN PEOPLE



Despite your letter's attempt to indicate otherwise, the letter of 28 February and subsequent reports to Committee clearly evidence that the Council has already taken a predetermined position and makes no reference to this being an ongoing process; nor does the letter invite submissions. Although the letter states that it is willing to receive any further information that may come to light, it is in the context that it includes a clear and unequivocal statement that the Council is asserting the public right of way with pedestrian rights only and it refers to the fact of landowners having been given the opportunity to provide evidence and to respond (our emphasis). That is not only untrue, but at all material times the Council has known that to be so.

Although our client intends to proceed with finalising its submission which it will have with the Council within the 3 week period suggested, it reserves all rights in respect of the manner in which this matter has been conducted by your client to date.

Yours faithfully

Copy to: Robert Gibson (by email)



BY EMAIL ONLY

Mr Philip Kingston

Derry and Strabane District Council

Our Ref:

Your Ref:

Date: 08 May 2018

Dear Mr Kingston

In the matter of proposed assertion of a public right of way at lands at Greencastle and Rouskey, Co Tyrone

We refer to our previous correspondence and now enclose submission on behalf of our client. We should be grateful if you would acknowledge receipt.

We would welcome the opportunity to discuss this matter with you further and should be grateful if you would get in touch with us with suitable dates.

Yours faithfully

Copy to: Robert Gibson (by email only)

IN THE MATTER OF FERMANAGH & OMAGH DISTRICT COUNCIL

AND

IN THE MATTER OF A PROPOSED ASSERTION OF A PUBLIC RIGHT OF WAY

LANDS AT GREENCASTLE AND ROUSKEY, COUNTY TYRONE

RESPONSE OF LANDOWNER OF PART OF THE LANDS

May 2018

EXECUTIVE SUMMARY:

1. _____ is one of many landowners affected by Fermanagh and Omagh District Council's (the "Council") proposal to assert a Public Right of Way over lands at Greencastle Rouskey.
2. The Council last considered this substantively in May 2017 and when _____ were given formal written assurances that they were given the opportunity to comment on the process and the evidence. The _____ submission has been delayed until this stage because of delays in the Council providing copies of the relevant material under the Freedom of Information legislation and then as a result of the Council providing information to another landowner that the decision had already been made, without consideration of the _____ and other impacted landowners) submissions. It has now been clarified that the decision has not been finalised and that the _____ submission will be considered as part of the decision making process. Confirmation on this was only received on 17 April.
3. _____ has fundamental concerns with the way the Council officer has conducted this investigation, interrogated the evidence, and conclusions reached. Confusion between how private land rights and the path under use is confused and provides no evidence of a Public Right of Way over the lands that it is proposed to assert. There is substantial evidence that there is no Public Right of Way and the evidence of use which has been received relates either to the publicly adopted Mullydoo Road or is consistent with private rights of way.
4. The legal principle has been repeatedly misstated and misapplied. The proposition "once a highway, always a highway", has been applied rather than the correct principle which is **"once a highway, always a highway, until it is stopped by competent legal authority"** which should be presumed when the state of affairs (i.e. its non-use) has existed for a sufficient period. Any evidence of this having been a highway, which in any event is not categorical, dates back prior to the 1850s. It is indisputable that the line has disappeared by 1854.
5. The Council officer refers to advice from an independent barrister back in April 2017. Any advice given at that stage cannot be based on full instructions. It is essential for an updated opinion to be obtained from an independent barrister who has been fully briefed with the papers, including the _____ submission, to allow the Council to make a legally robust decision, particularly given the repeated misstatement of the law without correction thus far, the repeated breaches of the published guidance that also remain uncorrected, and the repeated evidence of pre-determination through the process.

BACKGROUND:

1. [REDACTED] is the landowner of substantial areas of the relevant lands at Greencastle.
2. This is the response to the materials that were produced between July 2017 and January 2018. Significant disclosure was refused by Fermanagh and Omagh District Council (the Council) and the Freedom of Information request of June 2017 was only fully dealt with on 11th January 2018.
3. The preparation of this response was delayed because of correspondence from the Council's Chief Executive to another concerned landowner dated 28 February 2018, making it clear that a decision to assert the public right of way with pedestrian rights only has been made. That February 2018 correspondence was consistent with reports to the Regeneration and Community Committee in March and April 2018 respectively which were recommending the assertion of the public right of way, despite the firm and unequivocal assurances that had been given to [REDACTED] by both the Council's solicitor and its Director of Community, Health and Leisure that the process is open.

[REDACTED] has now been advised by the Council's solicitor that the decision is not finalised. This submission has been prepared on that basis.
4. The Council refers to legal advice presented to the Council with a report taken to the Regeneration and Community Committee in April 2017 which is described as supporting the assertion. It has not disclosed this legal advice. However that legal advice cannot have been predicated upon full instructions and it is therefore essential that the updated Barrister's opinion is obtained in the light of this substantial submission and other material received from landowners.
5. The response is structured as follows:-
 - (i) legal principles are summarised;
 - (ii) the materials produced to [REDACTED] between July 2017 and January 2018 and referenced in the Council Officer's Summary Report dated November 2016 are assessed in the context of the legal principles;
 - (iii) the approach of the Council Officer is considered;
 - (iv) conclusions are set out.

LEGAL PRINCIPLES:

OBLIGATION ON COUNCILS

The general duty and requirement to consider conflicting evidence:

6. A Council has an obligation to assert a public right of way under Article 3 of the Access to the Countryside (NI) Order 1983. That is subject to a requirement to consider the evidence. It is not a duty that arises just because someone makes a claim. There is not an absolute requirement to assert wherever a claim is made. There is no legal requirement to assert a right of way in every case and where there is conflicting evidence there is no legal requirement to commence the assertion process.
7. The English Court of Appeal has made it clear¹ that:
 - (i) the duty to assert is not absolute; and
 - (ii) it does not include an obligation on the local authority to assert claims in which they had no faith or where there was a real dispute.

The duty to consider conflicting evidence properly:

8. Given the clear view of the Courts that the Council has no duty to assert where there is a real dispute, it follows as a matter of logic that the Council must consider all of the evidence from the outset, including that evidence and those submissions against those who seek to persuade the Council to assert. If the Council fails to consider the issue and merely sets the assertion process in motion on the basis of the material produced by one side, that decision is susceptible to a judicial review challenge.

The standard of proof and burden of proof:

9. The standard against which evidence is to be assessed is the civil standard of the balance of probabilities². The burden of proof rests with the Council.
10. Consistent with those principles, a Council must review and test all of the evidence. It must allow a landowner whose property rights will be affected by a decision to review and respond to the material that the Council considers relevant to the assertion.

¹ R v Lancashire CC ex p Guyer [1980] 1 WLR 1024

² Todd v SoS Environment, Food & Rural Affairs [2004] 1 WLR 2471

THE TEST FOR A PUBLIC RIGHT OF WAY

11. An easement is a right benefiting land. It resembles the Roman law concept of "servitude". An easement is an incident to the land and not a personal right in the owner. There are four ways in which an easement can be acquired:
- (i) by statute;
 - (ii) express grant or reservation;
 - (iii) implied grant or reservation; and
 - (iv) presumed grant (prescription).
12. Where there is no evidence of statute or express grant or reservation, the Council must establish implied grant or presumed grant (prescription) by the owner or owners of the relevant lands of a right of passage to the public at large over the alleged right of way, and acceptance of that right of way by the public.
13. The intention to dedicate might be presumed from the fact of public user without interruption or objection on the part of the owner or owners. The use and enjoyment from which dedication can be inferred must be use and enjoyment as of right, which is known to, and acquiesced in, by the owner. In **Greenwich Board of Works v Maudslay**³ Mr Justice Blackburn held:

"It is necessary to show, in order that there may be a right of way established, that it has been used openly as a right, and for so long a time that it must have come to the knowledge of the owner of the field that the public were so using it as of right and from this apparent acquiescence of the owners a jury might fairly draw the inference that they choose to consent, in which case there would be a dedication".

14. An easement, including a right of way not created by deed, may be acquired by prescription in two primary ways:
- (i) by reference to the Prescription Act 1832⁴;
 - (ii) under the common law doctrine of lost grant.
15. Section 2 of the Prescription Act 1832 states:

"No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement, or to any watercourse, or

³ (1870) LR 5 QB 397, page 404

⁴ The Prescription Act 1832, expressly did not extend to Ireland. However the Act was extended to Ireland by An Act for Shortening of Prescription in Certain Cases in Ireland 1858.

*the use of any water, to be enjoyed or derived upon, over or from any land or water of our said lord the King, his heirs or successors, or being parcel of the duchy of Lancaster or of the duchy of Cornwall, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned **shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years**, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless such a claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing."*

16. The second way in which prescription could be claimed at common law was by showing a continuous user as of right from time immemorial. The date fixed as the limit of legal memory is 1189.
17. In practice the courts treat twenty years continuous user or sometimes user since living memory as sufficient to presume prescription. Prescription can be defeated by evidence of a break in the user between 1189 and twenty years before the claim is made: see Professor Wylie, *Irish Land Law*, 5th Ed., para 7.67.
18. As a result the period of time of any non-user is a significant material consideration in assessing whether any public right of way exists.
19. Neither Councils nor Courts are assisted by the maxim (repeated in public guidance) "once a highway, always a highway"⁵. This represents a misstatement and misrepresentation of the law. The simplistic expression of the maxim is the judgment of Byles J in *Dawes v Hawkins*⁶. **The correct position is that where there is evidence of non-use, that evidence creates a presumption that the highway has been properly and lawfully stopped.**

⁵ The former Environment & Heritage Service published a "A Guide to public rights of way and access to the countryside" (published in August 2006 and hereafter referred to as "the Red Book").

⁶ (1860) 8 CB (NS) 848

20. The accurate and complete representation of the approach of the Courts is found in **Representative Church Body v Barry**⁷, where Dodd J stated the maxim to be '*once a highway always a highway until it is stopped by competent legal authority*'.
21. **R v Montagu**⁸, is authority for the Courts presuming that, where a state of affairs exists for a sufficient period, it has come about lawfully.
22. This doctrine is the application of the maxim *omnia praesumuntur rite esse acta*: see **A-G v Simpson**⁹. This is the presumption of regularity, or simply put that until the contrary is proved, an act is presumed to comply with any necessary legal formality.
23. In **Williams v Eyton**¹⁰ where an old highway had not been used for **28 years**, the court held that the existence of an order of two justices (required by statute) confirming the decision of a commissioner to stop up an old road, could be presumed. **Wightman J held that where the old road had been enclosed for so long a period, this warranted the court in presuming that everything had been properly done.**

**THE MATERIALS PRODUCED TO BETWEEN JULY 2017 AND JANUARY 2018
REFERENCED IN THE COUNCIL OFFICER'S SUMMARY REPORT DATED NOVEMBER
2016:**

24. The Council has furnished with materials that formed the basis of the Council's pre-determined decision of May 2017. They are:-
 - (i) A bundle of Right of Way Investigation Initiation application forms stamped received April 2016;
 - (ii) A bundle of Right of Way Investigation Evidence Forms from landowners stamped received June 2016;
 - (iii) Evidence forms completed by stakeholders referenced at para 2.1.3 of the Council Officer's Summary Report;
 - (iv) A document entitled "Historical account of the public right of way between Rouskey and Greencastle (locally known as Green Road)";
 - (v) A "25th anniversary" flyer for the "Greencastle 5 mile road race";
 - (vi) A letter of support dated 4th October 2016;
 - (vii) A letter of support dated 15th November 2016;
 - (viii) A document entitled "Survey of Green Road, Rousky, Co Tyrone" dated October 2016.

⁷ [1918] 1 IR 402

⁸ (1825) 4 B&C 598 at 605

⁹ [1901] 2 Ch 671 at 698

¹⁰ (1858) 2 Hand N 771 (affd (1859) 4 H and N 357)

A bundle of Right of Way Investigation Initiation application forms stamped received April 2016:

25. Of these seven forms, several are identical in wording, and at least two are in the same handwriting.
26. The baseline information and material used to assemble the responses is confusing and unclear. The map furnished to parties shows two tracks; one the Mullydoo Road and the second the alleged track that the right of way investigation actually involves. Landowners were presented with a map that showed two clear lines and at no time is this clarified or explained.
27. The majority of returned forms do not refer to this discrepancy nor do they identify the line to which the evidence relates.
28. Relatedly, the Council Officer investigating this matter fell into exactly the same confusion. When attending the site, Ms McCarron stated to : that she was standing on the alleged right of way, when in fact she was standing on the Mulldoo Road. This is a further material element of the evidence. It is not merely a misunderstanding; the maps are confusing and the responses are as well.
29. People are asked to comment on "the route as described". The questionnaire says that "the route" is shown, and asks for comments on "the route", but two tracks are shown on the map. The evidence of use relates (inevitably) to one or other, but this distinction is not drawn and the inconsistency is not acknowledged. As a result no weight can be given to the evidence of usage provided as it could relate to the Mullydoo Road.

A bundle of Investigation Evidence Forms from landowners stamped received June 2016:

30. The evidence forms consist of 15 questionnaires. Many of these dispute there being any right of way with evidence of many years of actual knowledge. They are numbered up to 23 but we are advised by the Council that 7 landowners who were identified by reference to numbers on a Council database did not respond.
31. The evidence forms received demonstrate an outright conflict of evidence in respect of the line which is the subject of the investigation. That conflict of evidence is not addressed or engaged, underscoring the level of assessment. There are many acknowledgements of a diversion occurring between 1834 and 1854 and that the diversion (which is now an adopted road) is acceptable.

32. Furthermore there is neither assessment nor weight given to the Council Officer's own observations on the lack or absence of evidence of usage and the assertions of the types of usage and frequency alleged in the correspondence.
33. We address each of the forms that have been furnished in turn below.
34. Form 1 - the individual assertion in respect of use for livestock and turf (para 10) is wholly consistent with private rights. The assertion of third party activity makes clear (para 8a) that people stepped over wire. That is consistent with a way being blocked and no consent from the landowners to passing or re-passing on the lands. The assertion of "running" is not credible because of the series of gates and barriers referred to in the Council Officer's Survey report of November 2016. At the very height of the Survey Report, 10% has "completely gone" and it includes a private garden. Her assessment further states that *"some sections have not been walked frequently as there is no sign of footfall"*. The Council Officer fails to address this clear contradiction with the assertions made in this form and in others.
35. Forms 2 and 3 make no assertion of personal use but refers to 2 to 3 unidentified persons walking *"2-3 times per year"*. It acknowledges gates along the asserted route, but this is consistent with private owners not permitting access. There has been neither investigation nor questioning of the landowners involved regarding their description of private rights and the purpose of the gates. The replies at para 2 and 2a state that the alleged route is not a footpath or a bridle way. It does not say what "other" means, but the Council Officer has herself ruled out vehicular traffic. That leaves nothing. The illogicality of this position is not acknowledged, and neither is the inconsistency in this instance with the case officer's own observations of no sign of footfall.
36. Form 6 is wholly consistent with private rights. Any reference to the shortcut to the GAA grounds is consistent with use of the Mullydoo Road, and not the alleged right of way under investigation. Regardless of the quality of the evidence, whether there was a battle as alleged or at all, approximately 1000 years ago is irrelevant to the issue of the alleged Public Right of Way.
37. Form 7 again asserts walking and cutting turf and accessing consistent with private rights. It is stated in the specific context of the "family". This form provides no evidence of public usage.
38. Form 8 states that no members of the public have used the route over 40 years.

39. Form 10 states that no members of the public used the asserted route. This form is stark in its contradiction of the assertion of the route in stating that:

"in my 43 years living on this farm, I have never, ever seen a single person (or persons) using this "route".

40. Form 11 states there is no public usage other than usage consistent with private landowners going to their farms or turf.
41. Form 12 states from personal knowledge that there has been no use by the public for over 55 years. It states that the absence of use by any members of the public goes back two generations.
42. Form 15 is implausible. The assertion of "every day" use is contradicted even by those supporting a public right of way and by the Officer's Survey Report and is more consistent with the Mullydoo Road. The proposition that this was used by highwaymen as a route from Belfast to Derry is unsupported by any evidence.
43. Form 16 states from personal knowledge that there has been no use by the public for over 50 years. The land has been owned by a family member since the early 1900s with no mention of there being a right of way..
44. Form 18 asserts a "rough road" but has never seen anyone using it.
45. Form 19 states that nobody has walked this route in 42 years.
46. Form 20 states that there is no public route and was never open in the lifetime of the author for 60 years.
47. Form 22 asserts a bridle way for cutting, working and taking home turf. That is evidence of private rights and no evidence of public use.
48. Form 23 states that there is no public right of way. This is the statement on behalf of [redacted]
49. Of the 15 completed forms:-
- (1) 7 are categorical in the statement that there is no public right of way going back to the 1900s;
 - (2) 6 are wholly consistent with private rights of way.

50. This evidence is categorised by the Council Officer as “inconclusive”. However that is predicated upon the Council Officer ignoring the firm and categorical evidence of seven of the responses and the clear private rights issues raised by the six others. That is not “inconclusive”. The Council Officer’s response was then to seek out material to try to support an assertion recommendation. That involved ignoring further investigation of landowners, and the gathering up of the material addressed below.

Evidence forms completed by stakeholders referenced at para 2.1.3 of the Council Officer’s Summary Report:

51. The Council Officer contacted 25 additional “stakeholders”, seven of whom responded. It now appears that the Council Officer gives particular weight to these seven responses. No information is provided in respect of the identity of these persons, nor why they were contacted in contrast to anyone else.
52. In an act of deliberate pre-determination and bias, the Council Officer wrote (for example on 23rd September 2016) stating that her objective was “*to ascertain if there is enough evidence to formally recognise the Public Right of Way*”. The Council issued a coloured map that marked on the legend “*PROW*” (“Public Right of Way”). The correspondence and the provision of prepared maps confirms the bias inherent in the inquiry. The Council Officer’s task was to gather evidence on whether there was a right of way at all.
53. The Council Officer used these responses to alter her (already unsustainable) conclusions to the Council from “inconclusive” to a recommendation to assert.
54. Evidence in Form 1 appears to relate to another pathway as it refers to use by cycle, horseback and quad, and as being a rural road safe for children to walk. Given that the Council Officer found evidence of no footfall and the route is not passable by cycle, horseback or quad (as evidenced by the Council Officer’s photographs), it is irrational for any weight to be given to this wholly inconsistent evidence of use. This can only relate to the adopted road rather than the alleged public right of way. It is also notable that the individual completing the evidence did not mark the route on the plan despite a direct request to do so.
55. Form 2 also states that the use includes horse riding and cycling, and use by tractors, horses and quads. As with Form 1, this is contradicted by the Council Officer herself who found evidence of no footfall and the route is not passable by cycle, horseback or quad (as evidenced by the Council Officer’s photographs). It is

therefore irrational for any weight to be given to this wholly inconsistent evidence of use. The use can only relate to the adopted road rather than the alleged public right of way. It notes that there has been a diversion which is acceptable along the adopted road. That is highly material but is plainly overlooked by the Council Officer because there has been neither consideration nor understanding of the legal test involved.

56. Form 3 again refers to use by cycle, horse and cart, and this is contradicted by the Council Officer herself who found evidence of no footfall and the route is not passable by cycle, horse or cart (as evidenced by the Council Officer's photographs). It is therefore irrational for any weight to be given to this wholly inconsistent evidence of use. The use is consistent with the adopted road rather than the alleged public right of way. It acknowledges the acceptability of "a recent diversion". This line of the diversion has been on a map since the early 1850s.
57. Form 4 refers to the surface being raised and it being fenced and ditched on either side and there is reference to the route appearing on all maps of the area from 1834. These comments are inconsistent with the photographs provided by the Council Officer of the line under consideration and can only relate to the adopted road rather than the alleged Public Right of Way which appears on no maps from the mid 1850s. Again the individual completing the form has not indicated the line on a map.
58. Form 5 refers to use as an old cart route, recreational walking and access to land (work) by tractor and on foot. Again this is inconsistent with the photographs provided by the Council Officer of the line under consideration and consistent with the adopted road. The map attached to this form shows the adopted road and not the alleged Public Right of Way.
59. Form 6 refers to use for walking, cycling, farming activities and access to turf facilities and that the line is mostly existing with two banks to either side and is similar in width to the surfaced roads at either end. Use is said to be by foot, bicycle, car and tractor. This is contradicted by the Council Officer herself who found evidence of no footfall and the route is not passable by cycle, horseback or quad (as evidenced by the Council Officer's photographs). It is therefore irrational for any weight to be given to this wholly inconsistent evidence of use. The use can only relate to the adopted road rather than the alleged public right of way. The person completing the form has not marked the route being referred to on the attached map.
60. Form 7 is from an individual "involved in promoting access to the countryside". That

is not objective evidence. In addition, the description of usage for horse riding and cycling is contradicted by the Council Officer herself whose photographs demonstrate that the route is not passable by cycle or horseback. It is therefore irrational for any weight to be given to this wholly inconsistent evidence of use. The use can only relate to the adopted road rather than the alleged public right of way. inconsistent with the Council officer's evidence and photographs. The proposition that it is capable of usage by bicycles is unsustainable in light of the express findings in terms of the terrain, private property, and inaccessibility of parts of the area under investigation. Significantly, this is not supported by any other evidence.

The document entitled "Survey of Green Road, Rousky, Co Tyrone" dated October 2016:

61. It is significant that this document states that the issue of rights of way is outside of its scope (see para 3.2).
62. The summary helpfully acknowledges that "*parts are still in use for agricultural purposes*" and "*much of it has been abandoned*".
63. The summary (para 5) also states that a new road was built in the 1800s. Whilst there is no intention to deal with the issue of rights of way in the document, it is highly relevant that the document points to abandonment and usurping of the route. This act acknowledges a categorical break in usage (see para 22 above).
64. The document suggests that the alignment and gradient mean that "*that it was designed primarily for pedestrians, packhorses, and those on horseback rather than wheeled vehicles*". That is plainly assumption, and is neither indicative nor conclusive of public rights of way. It is consistent with a private right of way. It also flatly contradicts the various unsubstantiated assertions of vehicular traffic made in the earlier forms.
65. Paragraph 4 of the summary is a list of assumptions that are not based on evidence. It can equally be said that the trackway was constructed by the local landlords to facilitate agricultural workers, and not give rise to a public road.
66. Para 6 expressly says that it "*appears to have been used primarily for local access to fields and for turf cutting purposes rather than as a through route*" since the mid-1800s. There are obvious significant issues with this statement. First is the concession that there was local access to fields. That is consistent with tenants of the large estate using the route. Second, that is further confirmed by the assertion that tenants were required to maintain the route by the landowner. These elements

are consistent with private rights, not public right of way. Thirdly, this is significant because it is consistent with the thirteen statements of landowners that stated that there was no public right of way but that there was evidence of private rights being asserted.

67. The introduction acknowledges a highway "long abandoned as a public highway and largely overgrown" (see para 22 above).
68. At para 2.1 the absence of any reference to a road between Newtownstewart and Cookstown on Herman Moll's 1744 map is expressly noted but with the caveat that the absence of the road does not mean that it did not exist. That is not evidence. The map is evidence that there was no road.
69. It is not for the author to suggest that it is "*unfortunate*" that there are no references to any roads between Newtownstewart and Cookstown in the Public Records Office. In fairness the report acknowledges that it can only "speculate" on origins, but the Council officer and the Council thus far has failed to give any weight to the fact that this is not evidence, but speculation. It is however a matter of fact that there are no such references, and that is material to the question of whether there is evidence of any public right of way that should be asserted.
70. The document seeks to rely upon an unrelated industrial archaeology book written in 1980 to suggest that the trackway is a "direct alignment road". The document further presumes a conclusion that construction costs may have been a factor. There is no evidence presented in the document to support this. This is not evidence relevant to the line being a public right of way. The conclusion is that the use was restricted to private use.
71. Para 2.2 acknowledges that by 1854:

*It is possible that the Green Road **was already obsolete by this time**. A short stretch west of Rousky appears to have been abandoned, and its unsuitability for cars has already been noted in the vicinity of Greencastle.*

72. Referring to the case law above, and bearing in mind that the document expressly does not purport to comment on public rights of way, there is nothing in the document that, at its height, is inconsistent with the principles of law established (paras 17-22 above) that where a historic highway is abandoned (even if one is established or accepted), there is a legal presumption that this was done lawfully. It is apparent that the significant relevance of this route being obsolete from the

1850s was not recognized by the Council, giving way to the simplistic and erroneous mantra of "once a highway always a highway."

The "25th anniversary" flyer for the "Greencastle 5 mile road race":

73. The Greencastle 5 mile run does not takes place on the route of the alleged Public Right of Way and this flyer provides no evidence relevant to this investigation. Nothing in this document purports to be supported by evidence. The course is not the asserted right of way. It is of no relevance at all to the consideration.

The "letter of support" dated 4th October 2016:

74. There is no evidence provided to support the hyperbole that underpins the assertions in this document.

The "letter of support" dated 15th November 2016:

75. The proposition that there is "*a roadway of huge historical significance*" is without foundation. The letter seeks to conflate the asserted line with the general history of the area, and repeatedly does so. That is not evidence and the placing of any weight on this is misconceived.
76. Significantly the letter acknowledges the disappearance of rights of way as modern farming methods took hold.
77. Equally significant is the support for "reinstatement of the original straight roadway". This acknowledges that (setting aside the absence of evidence of a Public Right of Way) any original straight line is gone and has been gone for generations. There is nothing to suggest that the straight line was not removed other than in accordance with the maxim of law set out above.

The document entitled "Historical account of the public right of way between Rousky and Greencastle (locally known as Green Road)":

78. There is no evidence provided that this line formed a "sacred" path of any kind. There is no documentary or other evidence provided to support this assertion. This is an example of unsubstantiated assertions being cast as "history" without providing evidence.
79. Regardless of the quality of the evidence, whether there was a battle as alleged or at all approximately 1000 years ago is irrelevant to the issue of the alleged Public Right of Way.
80. Significantly the assertion that the tenants were required to upkeep any line is

consistent with a substantial estate and a private right of access for tenants. It is not indicative of a public right of way, and indeed the use of free labour from the tenants confirms that.

81. The local Parish website acknowledges that there are three mass rocks in the parish of Greencastle, at Crouck, Formil and Dorvill, where pilgrimages take place. There are photographic records of mass being celebrated at each of these locations. None of these relate to the alleged Public Right of Way.
82. Nothing provided in this document provides evidence to support the assertion of a public right of way.

CONCLUSIONS ON THE MATERIALS PRODUCED:

83. There is no evidence of:-
 - (1) creation by statute;
 - (2) express or implied grant or reservation; or
 - (3) acquisition by prescription.

THE APPROACH TO THE MATERIALS BY THE COUNCIL OFFICER:

84. The reports prepared for the Council misstate the law and fail to have regard for material considerations. The "investigation" is biased, pre-determined and conspicuously unfair. On the basis of the evidence the Council could and should have concluded that it had no obligation to assert the public right of way or investigate further.
85. From September 2016, the Council Officer's stated objective was to "*find enough evidence to formally recognise the Public Right of Way*" and attached a map that showed it. The conduct of the assessment process thereafter was consistent with the same biased approach to the materials. There was no attempt to apply the tests required of the Council and further those with an interest in the process were excluded and materials withheld from them.
86. The reports fail to consider requirements in the Red Book to assess and consider all of the evidence. In so failing, the legal principles and material considerations cannot possibly have been taken into account and the Council has pre-determined the issues in a manner that is unlawful.
87. Section 2.2.5 of the Red Book states:-

"2.2.5 Defining the district council's position

The sensitivity of countryside access and the conflicting public and private interests that are involved mean that the district council has to be clear, in its own mind, about the approach that it wishes to adopt. Working guidelines are therefore needed which define the council's position and which will help:

- *provide a framework within which sensitive or controversial decisions can be taken;*
- ***deal objectively with individual cases**, as and when they arise;*
- *ensure that the council can make its position clear from the outset in any access negotiations, and to **community groups and others that may be involved in access issues**;*
- *ensure that the staff concerned have a clear understanding of what is expected of them and how to proceed;*
- ***ensure that the council remains consistent between cases** and is therefore less vulnerable to accusations of inconsistency, **bias or maladministration** that might be levelled against it;*
- *determine priorities for action and programmes of work. (our emphasis)"*

88. The Council has failed in these guidelines as the ability to deal objectively with matters requires the Council to consider all representations, and not to defer consideration of representations to pre-determined court proceedings. Regrettably, and improperly, this is the approach adopted in the correspondence from the Council dated 14 January 2018 and endorsed in the Report to the Regeneration & Community Committee dated 13 February 2018;

89. Section 3.4.2 of the Red Book is clear:

"If the highway is seriously in dispute, the council has by implication to investigate the evidence for and against its existence. Where that evidence is found to be fairly evenly balanced the council may not have a duty (and, possibly, may not have the power) to assert and protect the highway. On the other hand, the dispute must be a "serious" in the sense of having some genuine substance to it. The council cannot simply say "We have been told by the landowner that this is not a public right of way and therefore do not propose to take any action"; the council must have a good reason for believing the landowner is, in fact, correct...

*A district council in Northern Ireland may be open to a challenge if it commences formal legal proceedings in respect of an alleged right of way that is later found not to exist. **This emphasises the importance of fully investigating the status of any disputed rights of way before commencing proceedings or taking other action to protect the public's rights**".*

90. What the Council Officer has done is to conclude "*I have been told by the supporters of asserting a public right of way that this is a public right of way and therefore I propose to take action.*" The Council is acting directly contrary to the specific warning in the Red Book and its conduct is unfair.

The Council Officer "Survey of Green Road between Greencastle and Rousky, Co. Tyrone", 17 November 2016:

91. This document discloses no evidence that is inconsistent with private rights of way. However what is notable is the repeated efforts of the author to attribute less weight to factors that are material to the legal tests.
92. There are a number of barriers that are consistent with private rights and private ownership. They are however characterised as "non surmountable", thereby ignoring or underplaying the fact of the presence of these private barriers. The presence of private lands and barriers is material to the issue of rights of way as explained above. However there is no investigation of the period of time that these barriers have been in place, nor of the fact that the public has acquiesced to these barriers consistent with there being no public right of way.
93. The gates are noted as "not locked" which is consistent with farming practices across Northern Ireland. That is a neutral and irrelevant factor.

The Council November 2016 "summary"

94. Generally the document fails to set out and address the legal tests and the material factors to be taken into account. This is inevitable when the document disregards the requirements for investigation set out in the Red Book. For example, in "*defining a public right of way*" at para 1.1.1 the author fails to set out or address the evidential criteria and the relevance of evidence and/or material that does not exist. The report (and indeed all assessments presented) fails to acknowledge or give any weight to the absence of evidence, independent objective corroboration or the materials that contradict the assertions being made.
95. Section 2 represents a clear statement of pre-determination and bias, entirely consistent with the approach contained in the correspondence of September 2016. The author states:-

"In carrying out any assertion, the Council must gather sources of evidence so it can demonstrate that a public right of way does exist."

That is not the function of the Council Officer or the Council. It is not for the Council to “*demonstrate that a right of way exists*”. The function is to assess such information as is produced. This merely underscores the same biased and predetermined approach which has characterized the investigation from 2016 to date.

96. The report acknowledges that “*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*” but gives no weight to the absence of public use of the line of the alleged Public Right of Way.
97. The “*documentary evidence*” at paragraph 2.1.2, in describing the alleged Public Right of Way as an “*old coach road*” fails to have regard for the contradiction contained in the evidence presented that the route was not designed for use by vehicular traffic.
98. At paragraph 2.1.3, it is stated that each of the 25 stakeholders was “*issued with an investigation evidence form and a map for them to demonstrate where, if it all, they felt the public right of way was*”. This is misleading. The letter sent by the Council Officer dated 23 September 2016 (at 10:49am) expressly states that:
- “As the responsible officer I am currently gathering evidence from local stakeholders and groups to ascertain if there is enough evidence to formally recognise the Public Right of Way.*
- I would be grateful if you could complete and return the enclosed “Investigation Evidence Form” at your earliest convenience.”*
99. The report of November 2016 is misleading because it gives the clear impression by the use of the words “if it all” that evidence had been sought in a open minded manner whereas the stakeholder who received the email above was not left with any impression of an open mind. In addition, three of the seven stakeholders attach a coloured map prepared by the Council showing the route entitled ‘Public Right of Way’.
100. This is further evidence of a biased and predetermined attitude to the questioning and investigation process, underplayed in the report to the Council. This is both unfair and unsatisfactory.
101. Section 3 is entitled “Balance of Evidence and Legislation”. For the reasons that have been set out in detail above, there has been neither engagement with, nor

understanding of, the legal framework or tests that are to be applied. Furthermore there has been a clear departure from the guidance set out in the Red Book. In terms of the “balance of evidence”, there are a sequential number of steps in the chronology are important to note:-

- (i) Prior to 23 September 2016, upon receipt of information from residents and land owners, the Council Officer concluded that the evidence as to a Public Right of Way was “inconclusive”.
- (ii) At that point, instead of seeking to bring forward a balanced investigation and to investigate the conflicting and competing claims, the Council Officer embarked upon a one sided investigation with a stated intention (see correspondence dated 23 September 2016) “to ascertain if there is enough evidence to formally recognise the Public Right of Way”.
- (iii) Thereafter the entire course of the investigation was to secure a recommendation and a decision that a Public Right of Way would be asserted.

102. Section 3 also contains the paragraph asserting that:

“All of the witness statements were checked with consistency with the survey report and the early, large scale additions of the Ordinance Survey Maps.”

103. For all of the reasons set out in detail above, that comment is not accepted and the evidence of the Council Officer in this regard is flawed.

104. There is no evidence of any balance, and the legal principles have not been considered. The evidence of use which is provided is consistent with private rights of way and, the body of evidence points in any case to the use of the public road, not the alleged Public Right of Way.

CONCLUSION

105. [redacted] has fundamental concerns with the way the Council officer has conducted this investigation, interrogated the evidence, and the conclusions reached. There is substantial evidence that there is no Public Right of Way and the evidence of use which has been received relates either to the publicly adopted Mullydoo Road or is consistent with private rights of way.

106. The legal principle has been repeatedly misstated and misapplied. The proposition “once a highway, always a highway”, has been applied rather than the correct principle which is **“once a highway, always a highway, until it is stopped by competent legal authority”** which should be presumed when the state of affairs (i.e. its non-use) has existed for a sufficient period. Any evidence of this having been a highway, which in any event is not categorical, dates back prior to the 1850s.

It is indisputable that the line has disappeared by 1854. There is no evidence to suggest that the eradication of the line was other than lawful and the doctrine of *omnia praesumuntur rite esse acta* applies.

107. The Council officer refers to advice from an independent barrister back in April 2017. Any advice given at that stage cannot be based on full instructions. It is essential for an updated opinion to be obtained from an independent barrister who has been fully briefed with the papers, including the ' submission, to allow the Council to make a legally robust decision, particularly given the repeated misstatement of the law without correction thus far, the repeated breaches of the published guidance that also remain uncorrected, and the repeated evidence of pre-determination through the process.

19/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

Fw: Our client:

Robert Gibson

Thu 10/05/2018 10:04

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

2 attachments (851 KB)

image2018-05-08-173513.pdf; 04208414.pdf;

From: I
Sent: 08 May 2018 17:48
To: Philip Kingston
Cc: Robert Gibson
Subject: ;]

Dear Mr Kingston

Please see attached correspondence.
Regards

are The Legal 500 2018 Northern Ireland Firm of the year. We are also celebrating our 125th year.

Charity of the Year 2017 is Marie Curie. If you would like to make a donation to Barnardos please

You can donate at our Just Giving page
<https://www.justgiving.com/fundraising/mariecurie>

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This email has been scanned for viruses. It is the responsibility of the recipient to ensure that onward transmission, op

Fw: Alleged Right of Way, Green Road, Greencastle

Imelda McCarron

Thu 10/05/2018 15:49

To: Robert Gibson <robert.gibson@fermanaghomagham.com>; Philip Kingston <Philip.Kingston@derrystrabane.com>;

 1 attachments (294 KB)

Ltr Imelda McCarron.pdf;

Robert, Philip

Response received from the solicitor I issued an FOI to last week.

Imelda

From: :
Sent: 10 May 2018 15:24
To: Imelda McCarron
Subject: Alleged Right of Way, Green Road, Greencastle

Dear Imelda,

Please see attached scanned copy letter.

Regards

This e-mail is confidential and may also be legally privileged. It is intended for the addressee only. If you have received it in error, you are on notice of its status. Please notify us immediately by reply email and then delete this message from your computer. Do not copy it or use it for any purpose, or disclose its contents to any other person. Any such use or distribution is prohibited and may be unlawful. This firm in accordance with applicable regulations may monitor e-mail. Whilst we endeavour to ensure that this e-mail & its attachments are virus free, this cannot be guaranteed and no liability is accepted. This e-mail shall not constitute evidence of any contractual relationship between the sender and addressee/recipient

Alleged Right of Way, Green Road, Greencastle

Thu 10/05/2018 15:25

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

 1 attachments (294 KB)

Ltr Imelda McCarron.pdf;

Dear Imelda,

Please see attached scanned copy letter.

Regards

This e-mail is confidential and may also be legally privileged. It is intended for the addressee only. If you have received it in error, you are on notice of its status. Please notify us immediately by reply email and then delete this message from your computer. Do not copy it or use it for any purpose, or disclose its contents to any other person. Any such use or distribution is prohibited and may be unlawful. This firm in accordance with applicable regulations may monitor e-mail. Whilst we endeavour to ensure that this e-mail & its attachments are virus free, this cannot be guaranteed and no liability is accepted. This e-mail shall not constitute evidence of any contractual relationship between the sender and addressee/recipient

Our Ref:

Your Ref:

Date:

10th May, 2018

Ms. Imelda McCarron
Countryside Recreation Officer
Fermanagh & Omagh District Council
The Grange
Mountjoy Road
Lisnamallard
Omagh
BT79 7BL

BY POST and EMAIL – Imelda.mccarron@fermanaghomagh.com

Dear Madam

Re: **Our Clients –**

Alleged Right of Way – Green Road, Greencastle.

We confirm we have now instructed Counsel in respect of the above matter. We would be grateful if some time could be afforded to allow for written submissions to be drafted and lodged on behalf of the above clients. We await hearing from you with an undertaking that no further action will be taken by the Council until such times as our submissions have been lodged.

Fw: ATI Panel Notification

Andrea McCourt

Mon 14/05/2018 08:23

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

Hi Imelda

Rather than get the panel together again, I sent the email below to get agreement for any further green road requests. I forgot to include a date to get back if anyone was not content but I think if no one has come back by Thursday it would be safe enough to reply to your current requests with the agreed exemption. Is that time enough for your outstanding requests? I will put a few words together and email them down to you later in the week.

Re putting the information on the website, does your admin support have access to the FODC admin website, Caoimhe doesn't have access yet so she wouldn't be able to help with this.

Thanks

Andrea

Andrea McCourt
Policy Officer

Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](https://www.facebook.com/fermanaghomagh)

From: Andrea McCourt

Sent: 11 May 2018 16:53

To: Stephen Forrest; Anne Marie Broderick; Deirdre McSorley; Celine McCartan; Ian Davidson

Cc: Caoimhe McDaid; Margaret McMahon

Subject: ATI Panel Notification

Dear All

You may remember we met earlier in the year regarding a request for information around Green Road. There have been quite a few requests for information on this subject, previous to this request and since, which means quite a bit of staff time has been spent dealing with the requests to date.

It has been decided to put all of the information we hold on this subject on the FODC website (redacting personal information, etc) so that, in future, we can refer all similar requests to the website. This job will take a bit of time and therefore we are proposing that if we receive any requests in the interim, we respond that we are withholding the information under Section 22 'information intended for future publication'.

I hope everyone is content with this decision. Please contact Margaret or me if you have any queries.

Just for everyone's info, this can be carried out for other requests for information; if there is a particular request your department/section is receiving regularly and you feel it would be beneficial to add information to the website please let us know.

Kind regards

Andrea

Andrea McCourt
Policy Officer

Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](#)

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.

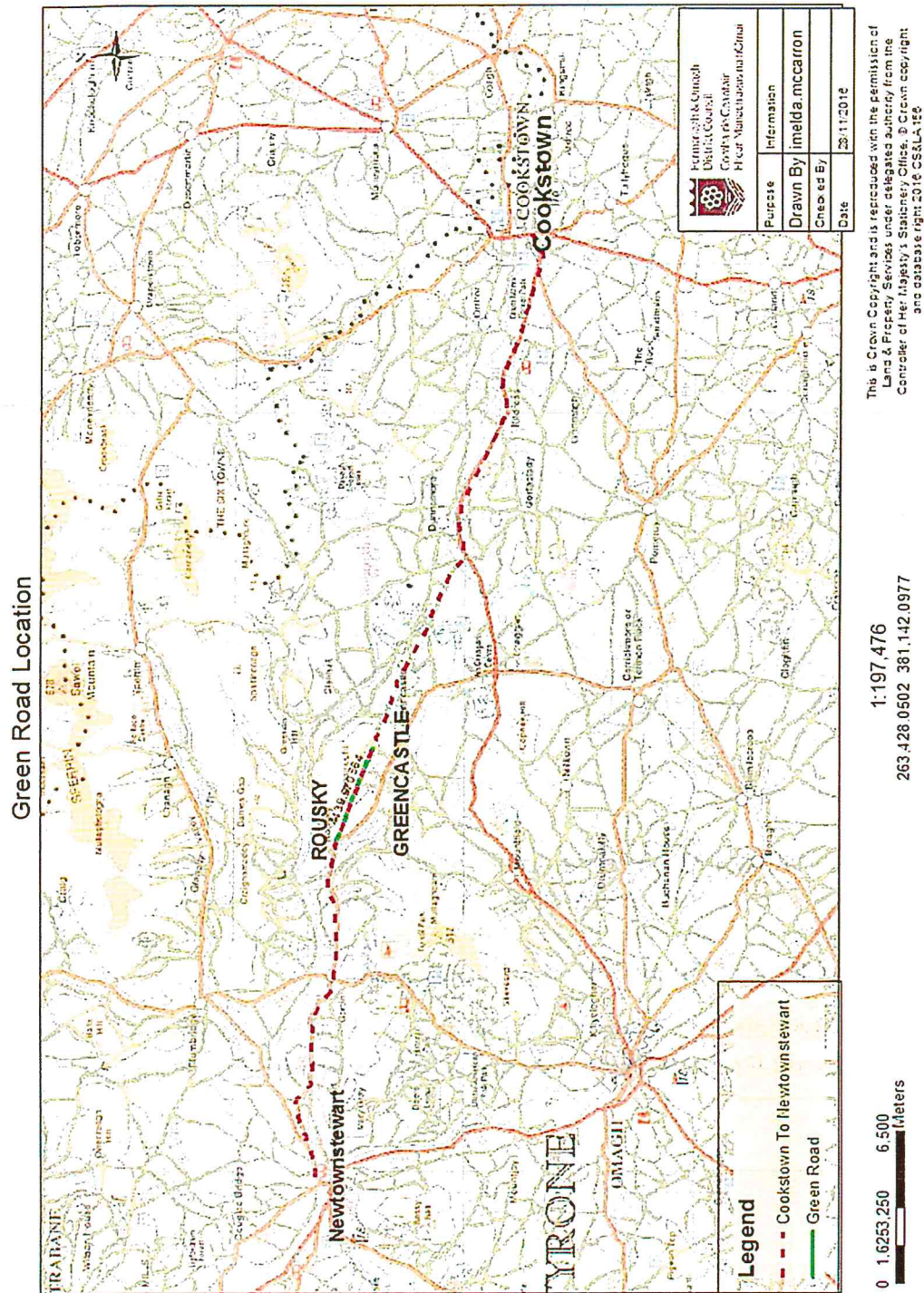
This report outlines the steps taken by Council staff, it gives a detailed report of the current condition of the road, a summary of the evidence and counter evidence for the assertion and the legislation that supports the recommendation of this particular case.

Be advised that this assertion report applies only to the Green Road, from Greencastle to Rousky. At the initial stages of the 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.



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

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.

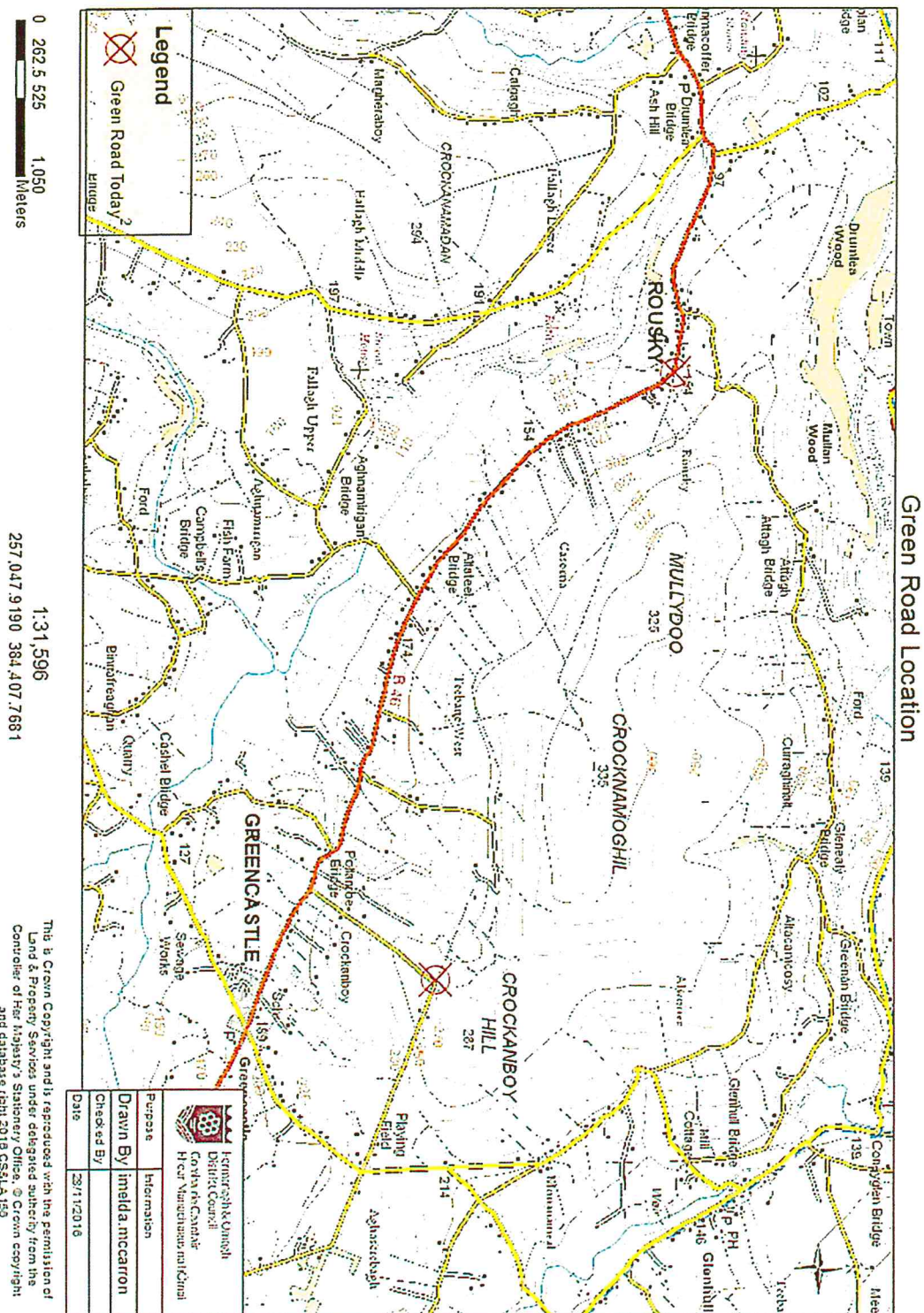
Taking into consideration the historic maps, the corroborating historical accounts of the origin of the Green Road and the evidence investigation forms, the countryside recreation officer, along with the Council's solicitor has evaluated the evidence, considered the legislation, and on the balance of 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

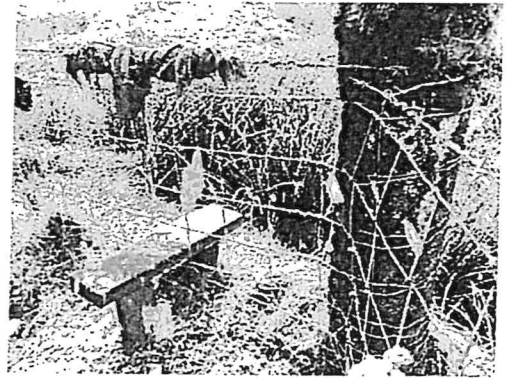


Figure 16

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

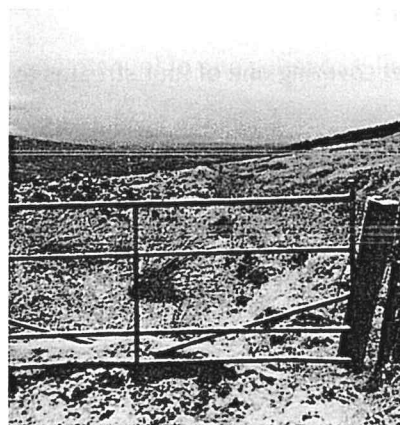


Figure 21

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

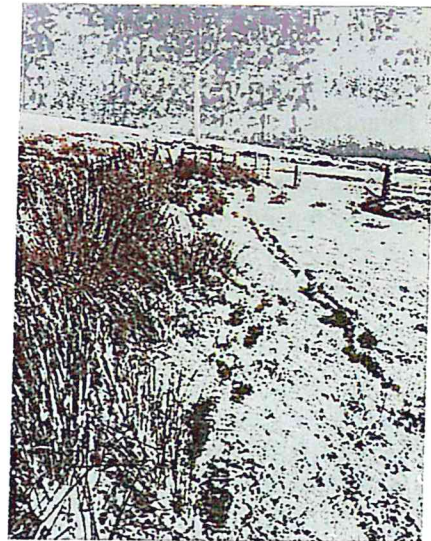


Figure 22

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

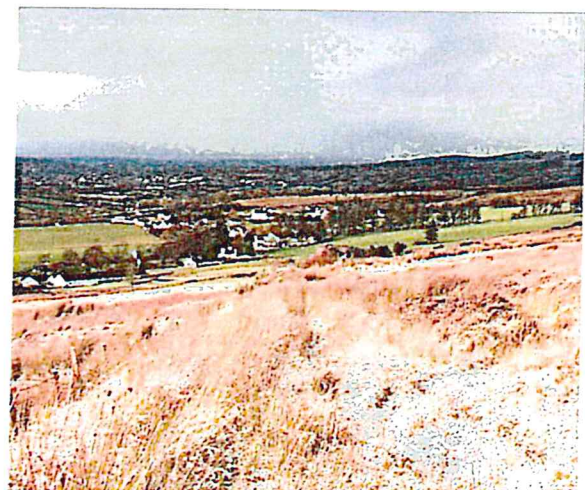


Figure 24

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

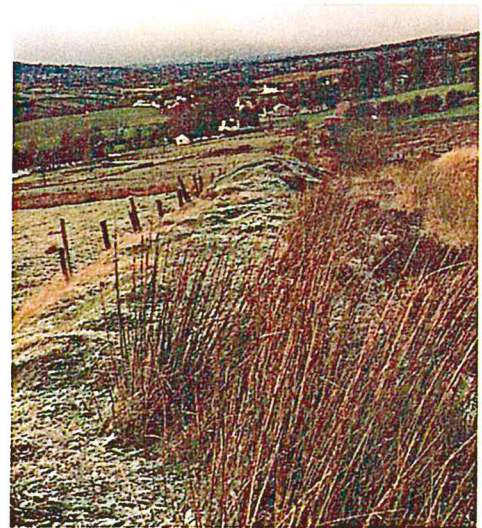


Figure 25

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



2. SUGGESTED SOURCES OF EVIDENCE

(See also the Antrim Borough Council CD – Forms A and D)

A. Verbal evidence - Contacts/Witnesses

1. District Councillors.
2. Local Tourist Officers.
3. Local contacts;
 - rambling clubs, amenity societies, angling clubs,
 - community development groups,
 - tourism associations,
 - other inhabitants with particular knowledge,
 - landowners and occupier,
 - Church Ministers, Post Masters.
4. Articles and notices in local newspapers, on notice boards, etc. requesting those who have used paths or who have information (eg histories, guidebooks, old maps and plans of the area) to come forward.

B. Documentary evidence

1. Records of the Department's Roads Service and Planning Service eg Planning Hazard Maps (contact should be with the appropriate Divisional Office).
2. Records of other government departments or bodies, eg Forest Service, Rivers Agency, Water Service, Education and Library Boards, etc.
3. Local histories, guide books, pamphlets.
4. Title deeds (may be viewed in the Land Registry, {see Appendix 5 for address}).
5. Ulster Society for the Protection of the Countryside (USPC), Ulster Federation of Rambling Clubs (UFRC), local history/heritage societies, Ulster Rural Riders' Association (URRA) and other countryside user groups.
6. Records of the National Trust.
7. Newspaper and magazine articles.
8. Aerial photographs.

C. Maps

1. Early large scale editions of Ordnance Survey maps which may show paths or tracks to have existed as a feature on the ground. The Ordnance Survey's *Instructions to Field Examiners and Revisers* manual gave detailed classification descriptions for roads, etc. This evidence has been used in a least one successful local Court case. A copy of the relevant text (Para 85) may be obtained from EHS or OSNI.
2. Current editions of OSNI maps.
3. Plans for railways, canals, road schemes (including those which were never constructed).
4. Any other old maps or plans from whatever source.

Your Ref

Our Ref

Date

Email

14 05 2018

Imelda.mccarron@fermanaghomagh.com



Fermanagh & Omagh
District Council

Comhairle Ceantair
Fhear Manach agus na hÓmaí

Brendan Hegarty
Chief Executive

d

Dear _____

RE: _____ } Green Road Public Right of Way Process

I write in response to your correspondence received on 23 April 2018.

As per your request, please find enclosed a copy of the assertion report.

With regard to details of evidence gathering, I have enclosed Appendix 2 from 'A Guide to Public Rights of Way and Access to the Countryside' which outlines guidance for the Council on suggested sources of evidence.

Yours sincerely

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

Imelda McCarron

Countryside Recreation Officer

Re:

Mon 14/05/2018 11:13

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

Cheers, and you're aware that is due to close on Wednesday!

Clarissa Beacom

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

Tel: 0300 303 1777 **Extension:** 21101

W: fermanaghomagh.com

Twitter & Facebook: fermanaghomagh

From: Imelda McCarron
Sent: 14 May 2018 11:03:06
To: Clarissa Beacom
Subject: ATI 1308/18

Clarissa

Please find response to As it is being issued by hard copy I have scanned it and saved a copy in the ATI folder.

Any queries, give me a call
Imelda

From: noreply@fermanaghomagh.com <noreply@fermanaghomagh.com>
Sent: 14 May 2018 11:06
To: Imelda McCarron
Subject:

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

19/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

Fw: Public Right of Way Investigation re green road, Rousky to Greencastle f

Freedom of Information

Mon 14/05/2018 11:31

To: Clarissa Beacom <clarissa.beacom@fermanaghomagh.com>; Imelda McCarron <imelda.mccarron@fermanaghomagh.com>

Hi Clarissa

Please see below. I would put this down as waiting on clarification, I emailed her on 1 May, therefore the '20 day clock' stopped ticking and will only start again when she responds to this email. Therefore response is not due this week. I will add a note to your ATI.

Thanks

Andrea

From: Freedom of Information
Sent: 01 May 2018 09:41 AM
To:
Subject: Re: Public Right of Way Investigation re green road, Rousky to Greencastle

Dear

When you have received your response, please inform me whether you are content and wish to close this request or if you would like it to be considered.

Kind regards

Andrea

From: '
Sent: 27 April 2018 02:46 PM
To: Freedom of Information
Subject: RE: Public Right of Way Investigation re green road, Rousky to Greencastle f

Andrea

The request of 16 April is for a subset of the information in respect of which the review is made. If the review is successful, there will be no need for this request to be dealt with separately but should it be refused, it will need to be considered, as it relates to a more specific body of information.

Regards

From: Freedom of Information [mailto:foi@fermanaghomagh.com]
Sent: 27 April 2018 14:08
To: I
Subject: Public Right of Way Investigation re green road, Rousky to Greencastle

Dear

Thank you for your request dated 16 April 2018.

I understand you made a request dated 12 March 2018 () which was responded to and subsequently you made an appeal.

I believe the information requested on 16 April 2018 has been covered in your earlier request, which is currently being dealt with following receipt of your appeal.

If you are requesting other information that has not being dealt with, please come back to me detailing exactly what information you are requesting.

Kind regards

Andrea

From: I
Sent: 16 April 2018 05:11 PM
To: Freedom of Information
Subject: FW: Public Right of Way Investigation re green road, Rousky to Greencastle]

In respect of the above investigation, we write formally under the Freedom of Information Act 2000 to request copies of the following:-

all correspondence to and from the Countryside Recreation Officer not already disclosed to us between July 2017 and January 2018.
the Countryside Recreation Officer's internal file notes and attendance notes from January 2016, not already disclosed to us between July 2017 and January 2018.
Regards

C are The Legal 500 2018 Northern Ireland Firm of the year. We are also celebrating our 125th year.

Charity of the Year 2017 is Barnardos. If you would like to make a donation to Barnardos please see

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<https://www.justgiving.com/fundraising/>

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ATI

Andrea McCourt

Fri 18/05/2018 08:51

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

Hi Imelda, please see wording for your response to the 3 outstanding requests for information:

In relation to your requests for information dated, it has been decided that all information held on file about the Green Road, excluding personal information which is exempt under Section 40 (2) and information which is exempt under Section 42 of the Act Legal Professional Privilege, will be published on the Council website, and I am therefore applying an exemption under Section 22 of the Freedom of Information Act 2000 (information intended for future publication). We currently have no definite date for publication but hope to have this information available at <https://www.fermanaghomagh.com/your-council/freedom-of-information/> in the coming weeks.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review by the Chief Executive at:

Chief Executive
Fermanagh and Omagh District Council
The Townhall
2 Townhall Street
Enniskillen
BT74 7BA

Email: Brendan.hegarty@fermanaghomagh.com

If you are not content with the outcome of the internal review, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the internal review procedure provided by the Council. The ICO can be contacted at:

The Information Commissioner's Office – Northern Ireland
3rd Floor
14 Cromac Place,
Belfast
BT7 2JB

Telephone: 028 9027 8757 / 0303 123 1114
Email: ni@ico.org.uk

Andrea McCourt
Policy Officer

Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com

19/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

Twitter and Facebook: fermanaghomagh

FW: Alleged Right of Way at Green Road, Greencastle

Thu 24/05/2018 16:28

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

 1 attachments (294 KB)

Ltr Imelda McCarron.pdf;

Dear Imelda

Please let me hear from you with regards to the attached letter.

Regards

From:

Sent: 10 May 2018 15:14

To: 'imelda.mccarron@fermanaghinagg.com' <imelda.mccarron@fermanaghinagg.com>

Subject: Alleged Right of Way at Green Road, Greencastle

Dear Imelda,

Please find attached scanned copy letter.

Regards

This e-mail is confidential and may also be legally privileged. It is intended for the addressee only. If you have received it in error, you are on notice of its status. Please notify us immediately by reply email and then delete this message from your computer. Do not copy it or use it for any purpose, or disclose its contents to any other person. Any such use or distribution is prohibited and may be unlawful. This firm in accordance with applicable regulations may monitor e-mail. Whilst we endeavour to ensure that this e-mail & its attachments are virus free, this cannot be guaranteed and no liability is accepted. This e-mail shall not constitute evidence of any contractual relationship between the sender and addressee/recipient

Our Ref:

Your Ref:

Date:

10th May, 2018

Ms. Imelda McCarron
Countryside Recreation Officer
Fermanagh & Omagh District Council
The Grange
Mountjoy Road
Lisnamallard
Omagh
BT79 7BL

BY POST and EMAIL – Imelda.mccarron@fermanaghomagh.com

Dear Madam

Re: **Our Clients –**

Alleged Right of Way – Green Road, Greencastle.

We confirm we have now instructed Counsel in respect of the above matter. We would be grateful if some time could be afforded to allow for written submissions to be drafted and lodged on behalf of the above clients. We await hearing from you with an undertaking that no further action will be taken by the Council until such times as our submissions have been lodged.

Yours faithfully

FW: Alleged Right of Way at Green Road, Greencastle

Thu 24/05/2018 18:10

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

 1 attachments (294 KB)

Ltr Imelda McCarron.pdf;

Philip, Robert

Solicitor looking for response to attached letter. Can either of you advise please?

Thanks
Imelda

Sent from my Windows 10 phone

From: <[redacted]>
Sent: Thursday, May 24, 2018 4:28:24 PM
To: Imelda McCarron
Subject: FW: Alleged Right of Way at Green Road, Greencastle

Dear Imelda

Please let me hear from you with regards to the attached letter.

Regards

From: <[redacted]>
Sent: 10 May 2018 15:14
To: 'imelda.mccarron@fermanaghinagg.com' <imelda.mccarron@fermanaghinagg.com>
Subject: Alleged Right of Way at Green Road, Greencastle

Dear Imelda,

Please find attached scanned copy letter.

Regards

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Fw: Our client:

Robert Gibson

Fri 25/05/2018 16:12

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

📎 1 attachments (37 KB)

image001.png;

From: Philip Kingston <Philip.Kingston@derrystrobane.com>

Sent: 25 May 2018 15:58

To: Philip Kingston

Cc: Robert Gibson

Subject: Re: Our client

Philip

Acknowledged with thanks.

Regards

Karen

Sent from my iPhone

On 25 May 2018, at 14:36, Philip Kingston
<Philip.Kingston@derrystrobane.com<mailto:Philip.Kingston@derrystrobane.com>> wrote:

Dear Ms.

Thank you for your correspondence and detailed statement. Council would propose to take some time to consider this and will seek further legal opinion in relation to the matter whereupon it will revert to you with regard to your request for a further meeting. We can assure you that Council will not be determining the matter without first reverting to you in that regard.

Kind regards,
Philip.

From: Philip Kingston
Sent: 08 May 2018 17:49
To: Philip Kingston <Philip.Kingston@derrystrobane.com<mailto:Philip.Kingston@derrystrobane.com>>
Cc: Robert Gibson (robert.gibson@fermanaghomagh.com<mailto:robert.gibson@fermanaghomagh.com>) <robert.gibson@fermanaghomagh.com<mailto:robert.gibson@fermanaghomagh.com>>
Subject: Our client:

Dear Mr Kingston

Please see attached correspondence.
Regards

are The Legal 500 2018 Northern Ireland Firm of the year. We are also celebrating our 125th year.

's Charity of the Year 2017 is Marie Curie. If you would like to make a donation to Barnardos please see our JustGiving page

You can donate at our Just Giving page

<https://www.justgiving.com/fundraising/mariecurie->

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Please be aware of an increased risk of cyber crime and fraud which uses email interception. When we send bank details by email, we will always use a secure, password protected document and will not include them in the body of an email message. If you receive an email from [redacted] which provides different bank details to those we have already provided to you, it is unlikely to be genuine. Please do not reply to the email and get in touch with us immediately. We will not take responsibility if you transfer funds to the wrong account.

This email has been scanned for viruses. It is the responsibility of the recipient to ensure that onward transmission, opening or use of this message and any attachments will not adversely affect its systems or data. Please carry out such virus and other checks as you consider appropriate. No responsibility is accepted by [redacted] in this regard.

Disclaimer

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Thanks
Imelda

Sent from my Windows 10 phone

From: ;
Sent: Thursday, May 24, 2018 4:28:24 PM
To: Imelda McCarron
Subject: FW: Alleged Right of Way at Green Road, Greencastle

Dear Imelda

Please let me hear from you with regards to the attached letter.

Regards

From: ;
Sent: 10 May 2018 15:14
To: 'imelda.mccarron@fermanaghmagh.com' <imelda.mccarron@fermanaghmagh.com>
Subject: Alleged Right of Way at Green Road, Greencastle

Dear Imelda,

Please find attached scanned copy letter.

Regards

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Your Ref : 1
Our Ref IMC/PK/GreenRoadPRoW
Date 29 May 2018
Email Imelda.mccarron@fermanaghomagh.com



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

Brendan Hegarty
Chief Executive

Ms. _____

Dear Ms.

RE: Clients –

Investigation of alleged Public Right of Way at Greencastle, Omagh

I refer to your correspondence of 10 May 2018.

As per your request, I can confirm that Council will take no action in relation to this matter for a period of 4 weeks from today's date to allow you to formalise your response.

I trust this is satisfactory, however should you have any queries, please do not hesitate to contact me.

Yours sincerely,

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

Imelda McCarron
Countryside Recreation Officer

19/07/2018

Mail – imelda.mccarron@fermanaghmagh.com

Re: Alleged Right of Way at Green Road, Greencastle

Imelda McCarron

Tue 29/05/2018 12:00

To: _____;

 1 attachments (516 KB)

290518_ _Response_Consultation_period.pdf;

Please see attached correspondence for your review.

Regards
Imelda

From: _____
Sent: 24 May 2018 16:28
To: Imelda McCarron
Subject: FW: Alleged Right of Way at Green Road, Greencastle

Dear Imelda

Please let me hear from you with regards to the attached letter.

Regards

From: _____
Sent: 10 May 2018 15:14
To: 'imelda.mccarron@fermanaghinagg.com' <imelda.mccarron@fermanaghinagg.com>
Subject: Alleged Right of Way at Green Road, Greencastle

Dear Imelda,

Please find attached scanned copy letter.

Regards

|
|

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Your Ref :

Our Ref IMC/PK/GreenRoadPRow

Date 29 May 2018

Email Imelda.mccarron@fermanaghmagh.com



Fermanagh & Omagh
District Council

Comhairle Ceantair
Fhear Manach agus na hÓmaí

Brendan Hegarty
Chief Executive

Ms. _____

Dear Ms. _____

RE: Clients – _____

Investigation of alleged Public Right of Way at Greencastle, Omagh

I refer to your correspondence of 10 May 2018.

As per your request, I can confirm that Council will take no action in relation to this matter for a period of 4 weeks from today's date to allow you to formalise your response.

I trust this is satisfactory, however should you have any queries, please do not hesitate to contact me.

Yours sincerely,

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

Imelda McCarron
Countryside Recreation Officer

Fw: FOI - Green Road

Andrea McCourt

Fri 15/06/2018 11:17

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

Hi Imelda

As I had already queried why they hadn't received the information agreed due to their appeal, I needed to let you know what was happening. I see from your email below that it will be next week before you have a chance to finish checking the information/redactions for publication, so I sent the below email today. Would you be able to get back to Caoimhe as soon as possible next week so any amendments can be made and we can get all on the website asap?

Dear .

I apologise for the delay in responding to you.

All information relating to 'Public Right of Way Investigation re green road, Rousky to Greencastle', is currently being redacted, where appropriate, scanned and arranged in chronological order, in order to make it available on the Council website.

I'm sure you can appreciate that all of the ATI requests received, regarding this topic alone, have taken up quite a bit of staff time and so the Council has taken the decision to publish all information held on file (withholding redactions due to personal information and information held under legal professional privilege) and all further requests will be directed to the website.

With reference to your appeal and the information you are to receive under point 2 of the Chief Executive's letter to you; all information will be available on the website at <https://www.fermanaghomagh.com/your-council/freedom-of-information/> by the end of next week.

Again, I apologise for this delay.

Kind regards

Andrea

Thanks

Andrea

Andrea McCourt
Policy Officer
Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](https://www.facebook.com/fermanaghomagh)

From: Imelda McCarron
Sent: 14 June 2018 16:30
To: Caoimhe McDaid
Subject: Re: FOI - Green Road

Hi Caoimhe

Thanks for sending this on. I was out of the office yesterday but had a look through attachment 1&2 today. I am away all day tomorrow again but I am in on Monday and I'll finish with doc 3 and come back to you with any changes if need be.

Thanks
Imelda

From: Caoimhe McDaid
Sent: 13 June 2018 15:51
To: Imelda McCarron
Cc: Andrea McCourt; Margaret McMahon
Subject: FOI - Green Road

Hi Imelda

Please see the documents attached.

I've deleted all the blank pages and believe you would like to look over the contents before publishing online. Would you please let me know if you are happy with the quality of the documents and Andrea will upload.

If you would like any pages replaced, please email me the newer version (with page number) and I can insert it.

Kind Regards

Caoimhe McDaid
Policy and Strategic Services

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

Re: FOI - Green Road

Caoimhe McDaid

Mon 18/06/2018 11:26

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

Caoimhe

Few amendments I'm hoping your software will be able to work for us!...

attachment 1 - 2018

pages 7&8 need swapped - I can do this

pages 29 - 53 need deleted (repeat info, unnecessary duplicate) - I can do this

page 122 - email from Andrea was blanked out but there was nothing on it that would qualify for redacting - can you just ask Margaret what she wants to do in this instance? - we don't have the originals, can you let me know what it says?

Just flicking through - handwritten note on 107, 108 and 109 - do you think this should be re scanned and a more legible copy inserted?

attachment 2 - 2017

pages 71 & 98 both redacted but again from the original I can't see the reasoning - check with MMCM - we don't have the originals, can you let me know what it says?

page 135 - delete - I can do this (and maybe the page before it?)

pages 141, 142 both redacted but again from the original I can't see the reasoning - check with MMCM - we don't have the originals, can you let me know what it says?

page 144 - email address needs redacted - we don't have the originals, can you please redact and scan this back to me, and I will replace old for new

pages 150,152&153 redacted but again from the original I can't see the reasoning - check with MMCM - we don't have the originals, can you let me know what it says?

page 176 - delete - I can do this

page 177 - name needs redacted - we don't have the originals, can you please redact and scan this back to me, and I will replace old for new

page 178, 192 & 194 - delete - I can do this

The pages that have lost words to the side of the page due to scanning, are these to be replaced?

Thanks
Caoimhe

From: Imelda McCarron
Sent: 18 June 2018 10:35
To: Caoimhe McDaid
Subject: Re: FOI - Green Road

Caoimhe

Few amendments I'm hoping your software will be able to work for us!...

attachment 1

pages 7&8 need swapped
pages 29 - 53 need deleted (repeat info, unnecessary duplicate)
page 122 - email from Andrea was blanked out but there was nothing on it that would qualify for redacting - can you just ask Margaret what she wants to do in this instance?

attachment 2

pages 71 & 98 both redacted but again from the original I can't see the reasoning - check with MMcM
page 135 - delete
pages 141, 142 both redacted but again from the original I can't see the reasoning - check with MMcM
page 144 - email address needs redacted
pages 150,152&153 redacted but again from the original I can't see the reasoning - check with MMcM
page 176 - delete
page 177 - name needs redacted
page 178, 192 & 194 - delete

Thanks
Imelda

From: Caoimhe McDaid
Sent: 13 June 2018 15:51
To: Imelda McCarron
Cc: Andrea McCourt; Margaret McMahon
Subject: FOI - Green Road

Hi Imelda

Please see the documents attached.

I've deleted all the blank pages and believe you would like to look over the contents before publishing online. Would you please let me know if you are happy with the quality of the documents and Andrea will upload.

If you would like any pages replaced, please email me the newer version (with page number) and I can insert it.

Kind Regards

Caoimhe McDaid
Policy and Strategic Services

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

19/07/2018

Mail – imelda.mccarron@fermanaghmagh.com

Fw: Public Right of Way Investigation re green road, Rousky to Greencastle

Clarissa Beacom

Thu 21/06/2018 15:07

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

Imelda,

FYI re link to FOI info and informing those who requested FOI previously.

Clarissa Beacom

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

Tel: 0300 303 1777 **Extension:** 21101

W: fermanaghmagh.com

Twitter & Facebook: fermanaghmagh

From: Clarissa Beacom

Sent: 21 June 2018 15:06

To: Freedom of Information

Subject: Re: Public Right of Way Investigation re green road, Rousky to Greencastle

Hi Andrea,

Please copy me in to your email to

I don't think it will be as easy going forward to just direct people to the website as there will be new information to supply, i.e. new emails, etc since the work carried out on that bundle.

Thanks,

Clarissa Beacom

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

Tel: 0300 303 1777 **Extension:** 21101

W: fermanaghmagh.com

Twitter & Facebook: fermanaghmagh

From: Freedom of Information

Sent: 21 June 2018 11:50:27

To: Clarissa Beacom

Cc: Caoimhe McDaid

Subject: Re: Public Right of Way Investigation re green road, Rousky to Greencastle

Hi Clarissa, when we get all up on the website I will email and let her know and I will close off ATIs. I think there was one other request (ants) who had requested info and was told it would be published (the ATI is closed so not sure of number), they would also need to be informed when it is up on the website, can you or Imelda let them know please?

Any further requests from now can all be signposted to the website.

<https://www.fermanaghmagh.com/your-council/freedom-of-information/> - this is where we intend to publish all

Thanks

Andrea

From: Clarissa Beacom

Sent: 21 June 2018 11:01 AM

To: Freedom of Information

Subject: Re: Public Right of Way Investigation re green road, Rousky to Greencastle

Hi Andrea,

Just following up on the below emails. What happens with this one now? Does it just remain open on my system forever or is there a time frame when I can just close it off?

Thanks,

Clarissa Beacom

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

Tel: 0300 303 1777 **Extension:** 21101

W: fermanaghmagh.com

19/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

Twitter & Facebook: fermanaghomagh

From: Freedom of Information
Sent: 14 May 2018 11:31:05
To: Clarissa Beacom; Imelda McCarron
Subject: Fw: Public Right of Way Investigation re green road, Rousky to Greencastle

Hi Clarissa

Please see below. I would put this down as waiting on clarification, I emailed her on 1 May, therefore the '20 day clock' stopped ticking and will only start again when she responds to this email. Therefore response is not due this week. I will add a note to your ATI.

Thanks

Andrea

From: Freedom of Information
Sent: 01 May 2018 09:41 AM
To:
Subject: Re: Public Right of Way Investigation re green road, Rousky to Greencastle

Dear

When you have received your response, please inform me whether you are content and wish to close this request or if you would like it to be considered.

Kind regards

Andrea

From:
Sent: 27 April 2018 02:46 PM
To: Freedom of Information
Subject: RE: Public Right of Way Investigation re green road, Rousky to Greencastle

Andrea

The request of 16 April is for a subset of the information in respect of which the review is made. If the review is successful, there will be no need for this request to be dealt with separately but should it be refused, it will need to be considered, as it relates to a more specific body of information.

Regards

From: Freedom of Information [mailto:foi@fermanaghomagh.com]
Sent: 27 April 2018 14:08
To:
Subject: Public Right of Way Investigation re green road, Rousky to Greencastle

Dear

Thank you for your request dated 16 April 2018.

I understand you made a request dated 12 March 2018 which was responded to and subsequently you made an appeal.

I believe the information requested on 16 April 2018 has been covered in your earlier request, which is currently being dealt with following receipt of your appeal.

If you are requesting other information that has not being dealt with, please come back to me detailing exactly what information you are requesting.

Kind regards

Andrea

From:
Sent: 16 April 2018 05:11 PM

19/07/2018

Mail – imelda.mccarron@fermanaghmagh.com

To: Freedom of Information

Subject: FW: Public Right of Way Investigation re green road, Rousky to Greencastle

In respect of the above investigation, we write formally under the Freedom of Information Act 2000 to request copies of the following:-

all correspondence to and from the Countryside Recreation Officer not already disclosed to us between July 2017 and January 2018.

the Countryside Recreation Officer's internal file notes and attendance notes from January 2016, not already disclosed to us between July 2017 and January 2018.

Regards

The Legal 500 2018 Northern Ireland Firm of the year. We are also celebrating our 125th year.

Charity of the Year 2017 is Barnardos. If you would like to make a donation to Barnardos please see

You can donate at our Just Giving page

<https://www.justgiving.com/fundraising/>

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19/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

Fw: Public Right of Way Investigation re green road, Rousky to Greencastle

Clarissa Beacom

Thu 21/06/2018 15:45

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

Cc: Freedom of Information <foi@fermanaghomagh.com>;

Imelda,

FYI - Please see below email from Andrea.

Clarissa Beacom

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

Tel: 0300 303 1777 **Extension:** 21101

W: fermanaghomagh.com

Twitter & Facebook: fermanaghomagh

From: Freedom of Information

Sent: 21 June 2018 15:42

To: Clarissa Beacom

Subject: Re: Public Right of Way Investigation re green road, Rousky to Greencastle [REDACTED]

Hi Clarissa

New information should be added every so often eg every 3 months, I think Caoimhe was to discuss with Imelda the best timeframe. That will be included in the [REDACTED] and also I have written a covering letter for the information on the website and it will state that also.

Thanks

Andrea

From: Clarissa Beacom

Sent: 21 June 2018 03:06 PM

To: Freedom of Information

Subject: Re: Public Right of Way Investigation re green road, Rousky to Greencastle

Hi Andrea,

Please copy me in to your email to [REDACTED]

I don't think it will be as easy going forward to just direct people to the website as there will be new information to supply, i.e. new emails, etc since the work carried out on that bundle.

Thanks,

Clarissa Beacom

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

Tel: 0300 303 1777 **Extension:** 21101

W: fermanaghomagh.com

Twitter & Facebook: fermanaghomagh

From: Freedom of Information

Sent: 21 June 2018 11:50:27

To: Clarissa Beacom

Cc: Caoimhe McDaid

Subject: Re: Public Right of Way Investigation re green road, Rousky to Greencastle

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<https://www.fermanaghomagh.com/your-council/freedom-of-information/> - this is where we intend to publish all

Thanks

Andrea

19/07/2018

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To: Freedom of Information
Subject: Re: Public Right of Way Investigation re green road, Rousky to Greencastle

Hi Andrea,

Just following up on the below emails. What happens with this one now? Does it just remain open on my system forever or is there a time frame when I can just close it off?

Thanks,

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

Tel: 0300 303 1777 **Extension:** 21101
W: fermanaghomagh.com
Twitter & Facebook: fermanaghomagh

From: Freedom of Information
Sent: 14 May 2018 11:31:05
To: Clarissa Beacom; Imelda McCarron
Subject: Fw: Public Right of Way Investigation re green road, Rousky to Greencastle

Hi Clarissa

Please see below. I would put this down as waiting on clarification, I emailed her on 1 May, therefore the '20 day clock' stopped ticking and will only start again when she responds to this email. Therefore response is not due this week. I will add a note to your ATI.

Thanks

Andrea

From: Freedom of Information
Sent: 01 May 2018 09:41 AM
To: ' '
Subject: Re: Public Right of Way Investigation re green road, Rousky to Greencastle

Dear ' '

When you have received your response, please inform me whether you are content and wish to close this request or if you would like it to be considered.

Kind regards

Andrea

From: ' '
Sent: 27 April 2018 02:46 PM
To: Freedom of Information
Subject: RE: Public Right of Way Investigation re green road, Rousky to Greencastle

Andrea

The request of 16 April is for a subset of the information in respect of which the review is made. If the review is successful, there will be no need for this request to be dealt with separately but should it be refused, it will need to be considered, as it relates to a more specific body of information.

Regards

From: Freedom of Information [mailto:foi@fermanaghomagh.com]
Sent: 27 April 2018 14:08
To: '
Subject: Public Right of Way Investigation re green road, Rousky to Greencastle '

19/07/2018

Mail – imelda.mccarron@fermanaghmagh.com

Dear _____

Thank you for your request dated 16 April 2018.

I understand you made a request dated 12 March 2018 (_____ which was responded to and subsequently you made an appeal.

I believe the information requested on 16 April 2018 has been covered in your earlier request, which is currently being dealt with following receipt of your appeal.

If you are requesting other information that has not been dealt with, please come back to me detailing exactly what information you are requesting.

Kind regards

Andrea

From:

Sent: 16 April 2018 05:11 PM

To: Freedom of Information

Subject: FW: Public Right of Way Investigation re green road, Rousky to Greencastle

In respect of the above investigation, we write formally under the Freedom of Information Act 2000 to request copies of the following:-

all correspondence to and from the Countryside Recreation Officer not already disclosed to us between July 2017 and January 2018.
the Countryside Recreation Officer's internal file notes and attendance notes from January 2016, not already disclosed to us between July 2017 and January 2018.
Regards

Chair

are The Legal 500 2018 Northern Ireland Firm of the year. We are also celebrating our 125th year.

's Charity of the Year 2017 is Barnardos. If you would like to make a donation to Barnardos please see

You can donate at our Just Giving page

<https://www.justgiving.com/fundraising/>

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Please be aware of an increased risk of cyber crime and fraud which uses email interception. When we send bank details by

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19/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

<https://www.justgiving.com/fundraising/mariecurie->

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Please be aware of an increased risk of cyber crime and fraud which uses email interception. When we send bank details by
This email has been scanned for viruses. It is the responsibility of the recipient to ensure that onward transmission, op

Freedom of Information

To: Clarissa Beacom <clarissa.beacom@fermanaghomagha.com>; Imelda McCarron <imelda.mccarron@fermanaghomagha.com>;

David hopes to have the files compressed enough for the website by tomorrow, I may not be in the office so it could be Monday before they are on the website unless Caoimhe is able to upload tomorrow. It will be Monday before I can email _____ to let her know.

Andrea

Freedom of Information

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

From: Imelda McCarron
Sent: 02 July 2018 12:16 PM
To: Freedom of Information
Subject: Re: Green Road

From: Freedom of Information
Sent: 02 July 2018 11:49
To: Imelda McCarron
Subject: Green Road

is looking through the information online and has come across her contact details in the 2018 file, page 23. On checking it looks like there were post-its on the page as half of the page has been redacted so possibly some fell off in the copying process.

Unfortunately it isn't a simple redaction, as the files were so large ICT had to spend considerable time working on them to get them ready for the website.

Can you, or someone in your section, check the files that are online for places where post-its may have come away or where personal details may have been missed, to ensure this doesn't happen again?

Thanks

Andrea

From: David Shaw <support@fodc.freshdesk.com>

Sent: 29 June 2018 16:20

To: Andrea McCourt

Cc: Caoimhe McDaid

Subject: Re: host 3 large files on website

Hi Andrea,

Apologies this has taken so long.

Here are the links:

<http://fodc.online/responses/2016.zip>

<http://fodc.online/responses/2017.zip>

<http://fodc.online/responses/2018.zip>

The files are hosted on a separate council site but the links will work seamlessly.

Thanks

David

Re: host 3 large files on website

Andrea McCourt

Tue 03/07/2018 11:55

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

Hi Imelda

I'll do my best to look through today and if you can get the redacted pages through asap and we'll try to get it back up by tomorrow.

Thanks

Andrea

Andrea McCourt
Policy Officer
Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](https://www.facebook.com/fermanaghomagh)

From: Imelda McCarron
Sent: 03 July 2018 08:29
To: Andrea McCourt
Subject: Re: host 3 large files on website

Andrea

I have looked and I can see no further breach. Maybe someone in Policy can have a double scan through and recheck?

I'll get redacted pages through as soon as I can. I have a meeting in Belfast this morning but I hope to be back this afternoon.

Imelda

From: Andrea McCourt
Sent: 02 July 2018 16:55
To: Imelda McCarron
Subject: Fw: host 3 large files on website

Imelda

This is potentially a breach and [redacted] is obviously aware of her name in one of the documents, at least. Can you ensure you are as content, as you can be, that these are ready to go back up again? A further breach would only compound the situation.

Thanks

Andrea

Andrea McCourt
Policy Officer
Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: fermanaghomagh

From: Andrea McCourt
Sent: 02 July 2018 16:18
To: Imelda McCarron
Subject: Re: host 3 large files on website

Imelda, can you get Clarissa/Elish to redact as below and email these pages to Caoimhe and me? I don't have access to the pdf xchange editor, Caoimhe has it on her computer, she should be back tomorrow and can swap in the new pages then. When Caoimhe has that done we can send on to ICT again for compression and conversion to online files and we can get them back up again.

Thanks

Andrea

Andrea McCourt
Policy Officer
Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: fermanaghomagh

From: Imelda McCarron
Sent: 02 July 2018 15:44
To: Andrea McCourt
Subject: Re: host 3 large files on website

Thanks Andrea. With regard to the legal exception do we need to blank out Philip's and AnneMarie's name throughout?! **Their names can be left in, just the advice between the Council and them that would be removed if required.**

I found the following, in light of this info we may need to look at ...

2016

page 10 - [redacted] contact details. She no longer works for the organisation but I don't know what the process is on this - **to be redacted**
page 298 - the email signature mentions [redacted] . Groups name but no individual? - **leave in**

2017

page 138 - it refers to [redacted] email address. As this is the barristers name does it need removed? - **to be redacted**
page 143 & 144 [redacted] contact details - **to be redacted**

2018

page 23 - gain - to be redacted

page 55&56 - there is a lot of emails from the Department (NI-Communities) how are these treated? - these are work email addresses so they are fine unless there is good reason not to release (out of courtesy you could let them know their work email addresses, etc are being released as part of this ongoing enquiry, they may come back and ask for their names to be withheld and we would have to consider that separately). Would the body of the emails be public knowledge no matter who asked? We would only need to redact if there is anything confidential, personal, legal.

Thanks

From: Andrea McCourt
Sent: 02 July 2018 15:03
To: Imelda McCarron
Subject: Re: host 3 large files on website

Re fodc email addresses - I think Caoimhe redacted a few when she started at this but Margaret was content that they are left in so I didn't take any out and Caoimhe didn't take any further out but to save time she possibly left what she had redacted already.

Other emails depend on eg if the email is a request for information (FOI/EIR) then the requester's details should be redacted, no matter who they are. If the email is from eg another govt department with advice/information that you would reasonably expect to be published and there would be no reason to remove the individuals name then it could be left on (you may have to contact them to ask if they are content for their contact details to be left on). Re the Council, do you mean we have taken out the name of the council but the department in the council has been left, eg redacted fodc but left in chl?

These are the 2 exemptions that we are using, and this is the link to the ico website where there is further info.

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

Section 40(2) – data protection

This exemption covers the personal data of third parties (anyone other than the requester) where complying with the request would breach any of the principles in the Data Protection Act.

If you wish to rely on this exemption, you need to refer to the Data Protection Act as the data protection principles are not set out in the Freedom of Information Act. More details can be found in our [Guide to Data Protection – data protection principles](#).

This exemption can only apply to information about people who are living; you cannot use it to protect information about people who have died.

The most common reason for refusing information under this exemption is that it would be unfair to the individual concerned. Section 40(2) is an absolute exemption, so you do not need to apply the public interest test. However, you may need to consider the public interest when applying the data protection principles.

Section 40 includes other provisions for people's data protection rights, and these provisions are qualified by a public interest test.

Section 42 – legal professional privilege

This applies whenever complying with a request would reveal information that is subject to 'legal professional privilege' (LPP) or the equivalent Scottish rules. LPP protects information shared between a client and their professional legal advisor (solicitor or barrister, including in-house lawyers) for the purposes of obtaining legal advice or for ongoing or proposed legal action. These long-established rules exist to ensure people are confident they can be completely frank and candid with their legal adviser when obtaining legal advice, without fear of disclosure.

This exemption is qualified by the public interest test.

Thanks

Andrea

Andrea McCourt
Policy Officer
Policy and Strategic Services
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Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](https://www.facebook.com/fermanaghomagh)

From: Imelda McCarron
Sent: 02 July 2018 12:52
To: Andrea McCourt
Subject: Re: host 3 large files on website

Andrea

What's the guidance on business emails? We have some blanked out but others we have kept in - like most FODC have their emails available but some are blanked. We've an email from another Council blocked but we've the department emails open?

Imelda

From: Andrea McCourt
Sent: 02 July 2018 12:23
To: Imelda McCarron
Subject: Fw: host 3 large files on website

Andrea McCourt
Policy Officer
Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](https://www.facebook.com/fermanaghomagh)

2018 - page

Andrea McCourt

Tue 03/07/2018 16:42

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

Hi Imelda

Her name is also on page 118 of 2018, it's only first name but probably should redact.

Thanks

Andrea

Andrea McCourt
Policy Officer
Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](#)

19/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

FOI complaint from obo

casework@ico.org.uk

Thu 05/07/2018 12:10

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

 1 attachments (135 KB)

Initial letter to Fermanagh Omagh DC.doc;

Dear Imelda

Please find attached my initial letter regarding the above complaint.

Yours sincerely

FAO Ms Imelda McCarron

Via e-mail : imelda.mccarron@fermanaghmagh.com

5 July 2018

ICO Case Reference: ?
Your Reference:

Dear Madam

Freedom of Information Act 2000 (FOIA)
Complainant: obo

I am writing to inform you that the Commissioner has accepted the above case for investigation and I have now been asked to investigate it.

You should now reconsider the way the Council has handled this request and respond as detailed below.

ICO's approach

On receipt of a complaint under the FOIA, the Information Commissioner will give a public authority one opportunity to justify its position to her, before issuing a decision notice. Please consider the guide for public authorities on the Information Commissioner's website for more information about how we handle complaints:

http://www.ico.org.uk/for_organisations/freedom_of_information/guide.aspx

The request

On 12 March 2018, the complainant under FOIA requested:-

- 1) Correspondence from residents received in February 2016.
- 2) Correspondence to the 25 stakeholders identified at paragraph 2.13 of Summary of the Assertion Report dated November 2016.



3) Copies of all other correspondence, internal file notes, internal e-mails, reports, attendance notes, from January 2016, not already disclosed to us between July 2017 and January 2018.

The Council responded to the complainant on 12 April 2018, disclosing the requested information in parts 1 and 2 of the request with redactions and citing the exemption under section 40(2) (personal data of a third party) as a basis for those redactions. It refused to disclose the information requested in part 3, citing section 12(1) (cost limit) as a basis for non-disclosure. The complainant was not satisfied with that response and requested an internal review, the result of which was provided to her on 3 May 2018. The reviewer determined that the complainant should be provided with the information requested in part 3 of the request, subject to redactions, and upheld the original decision in respect of parts 1 and 2 of the complainant's request. The complainant contacted the Commissioner to complain about the way the Council handled part 2 of her request.

What you need to do now

Where possible the Information Commissioner prefers complaints to be resolved by informal means, and we ask both parties to be open to compromise.

It is also your responsibility to satisfy the ICO that you have complied with the law. The ICO's website has guidance which you should refer to in order to check whether your original response to the information request was appropriate.

This is your opportunity to finalise your position with the ICO. With this in mind, you should revisit the request. After looking at our guidance, and in light of the passage of time, you may decide to reverse or amend your position. If you do, please notify the complainant and me within the timeframe specified at the end of this letter. This may enable us to close this case informally without the need for a decision notice.

In any event, we need the following information from you to reach a decision.

- A copy of the withheld information (clearly marked with which exemptions apply). Please send both a redacted and an unredacted copy.
- Detailed explanations for the part of the FOIA cited.

- In particular please answer the following questions in relation to section 40(2) of FOIA.

Section 40(2) – personal data of third parties

Section 40 sets out an exemption from the right to know if the disclosure of third party data would breach any of the Data Protection Principles. In order to establish whether this is the case, could you please clarify the following:-

- Which Data Protection principle(s) would be breached by the disclosure of the information,
- How the principle would be breached by the disclosure of the information
- Whether any of the parties mentioned in the information objected to the disclosure of any part of the information.
- If the personal data is sensitive, have you checked whether a Schedule 3 DPA condition exists which would permit disclosure of the information.

We strongly recommend that your response is guided by recent decision notices, our guidance and our lines to take, which demonstrate the Information Commissioner's approach to the exemptions and procedural sections of the FOIA. These can be found on our website:

- http://www.ico.org.uk/enforcement/decision_notices
- http://www.ico.org.uk/for_organisations/freedom_of_information/guide
- <https://ico.org.uk/for-organisations/guidance-index/>

Having revisited the request, you may decide to apply a new exemption. We will consider new exemptions but it is your responsibility to tell the complainant why the new exemption applies and to provide us now with your full submissions.

For the avoidance of doubt, you should now do the following.

- Consider whether to change your response to the information request, and let us know the outcome.



- Send us the withheld information.
- Send us your full and final arguments as to why you think the exemptions apply.
- Answer all of the questions in this letter.

Please provide your response within 20 working days of the date of this letter, i.e. by **6 August 2018**, ensuring that you fully set out your final position in relation to this request. If you have any concerns please contact me at casework@ico.org.uk (quoting the above reference in this format [Ref. _____]) or call me on _____

Yours sincerely

Senior Case Officer

Re: 2018

Andrea McCourt

Thu 05/07/2018 14:57

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

Cc: Caoimhe McDaid <Caoimhe.McDaid@fermanaghomagh.com>;

Imelda

Leave the references in, they aren't really personal information so I think they will be fine.

Re [redacted] depends on the context, when [redacted] are requesting information on behalf of [redacted], they are requesters of information (FOI/EIR) and so we would normally redact their details as we would other requesters/solicitors and clients. We don't necessarily know, what is FOI/EIR and what is correspondence between you and [redacted], if there are places where we have said redact and you don't think they need to, then that's fine, eg if there is mention of Dalradian having a planning application, then this would be fine as this is public knowledge.

Re [redacted] details, initially we were responding to [redacted] and so her details did not need to be removed but as this is being put on the website they need to come off.

I have started on 2016 but I won't have it and 2017 done before I leave today and I am not in until the week after next. If you want to ask someone within your own dept to check them and you can let Caoimhe and Finbar know when they are ready. Caoimhe can take out/add in the pages to the pdf and forward to ICT for compression and conversion, and Finbar will be able to get them back online. Caoimhe is only in tomorrow and is the only one with pdf xchange editor up here so if amendments/confirmations aren't sent by tomorrow PM then it will be the week after next before we can get them back up again.

I'll let you know where I get up to this afternoon.

Andrea

Andrea McCourt
Policy Officer
Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](https://www.facebook.com/fermanaghomagh)

From: Imelda McCarron
Sent: 05 July 2018 13:59
To: Andrea McCourt
Cc: Caoimhe McDaid
Subject: Re: 2018

Andrea

I think it needs clarified as to what exactly was to be redacted. When Caoimhe and myself were looking at this originally I was of the understanding that any business emails didn't need redacted as they are public information anyway - we've now had to go back and remove [redacted] email. Also, do we now need to remove case references and the mention of Dalradian throughout? I'm sure you will appreciate the additional hours this will take as the whole document will need to be reviewed again.

With out the detailed knowledge and experience of FOI guidance that you guys would have, I'm afraid I'm not comfortable making a call on redacting the reference - I would be expecting to take a steer from policy on that. I would also hope policy would make a decision as to when they are happy for the information to be released.

Happy to discuss
Imelda

From: Andrea McCourt
Sent: 05 July 2018 12:13
To: Imelda McCarron
Cc: Caoimhe McDaid
Subject: 2018

Hi Imelda

Page 51 mentions [redacted] as a client - please redact, also [redacted], I don't think she could be identified from reference so do whatever you think with reference.

Page 63 [redacted] s above

Page 89 [redacted] it - please redact and [redacted] above

Sorry I have only looked through 2018.

Clarissa mentioned someone has been looking for the docs, I am off tomorrow and next week, do you think we should put all back up again after above redactions or would you rather wait until someone has looked through 2017 and 2016? I don't think I'll get them done today.

Thanks

Andrea

Andrea McCourt
Policy Officer
Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](https://www.facebook.com/fermanaghomagh)

Re: host 3 large files on website

Andrea McCourt

Thu 05/07/2018 17:45

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

Thanks for this Imelda, there's always room for human error with all our work, we can only do so much. Caoimhe is on standby to get all amendments done tomorrow and ICT are on standby to get compressed and converted, Finbar is off tomorrow but as soon as ICT get back to him he can put them up.

Thanks again

Andrea

Andrea McCourt
Policy Officer
Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](https://www.facebook.com/fermanaghomagh)

From: Imelda McCarron
Sent: 05 July 2018 17:26
To: Andrea McCourt
Cc: Caoimhe McDaid
Subject: Re: host 3 large files on website

Andrea

I went down through the 2016 and 2017 ones again. I sent quite a few bits through to Caoimhe - may be over kill now but rather safe than sorry. I can't see anything further that needs redacting but if there is it is genuine human error!

Thanks
imelda

From: Andrea McCourt
Sent: 05 July 2018 16:08
To: Imelda McCarron
Subject: Re: host 3 large files on website

Just tried there and no I can't get in either. I had mentioned to one of ICT they will need to be compressed and converted again so they possibly have removed them from the external onedrive.

I've attached our pdfs (large files). Just in case you are looking at 2018, Caoimhe has taken a list of the amendments to 2018 but hasn't made them yet.

Sorry I haven't made much progress with 2016, I keep getting phonecalls that need to be dealt with before i go off.

A

Andrea McCourt
Policy Officer
Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](#)

From: Imelda McCarron
Sent: 05 July 2018 15:51
To: Andrea McCourt
Subject: Re: host 3 large files on website

Andrea

The zip files won't open for me this afternoon - are you having any issues? Can you maybe resend?

Thanks
Imelda

From: Andrea McCourt
Sent: 02 July 2018 12:23
To: Imelda McCarron
Subject: Fw: host 3 large files on website

Andrea McCourt
Policy Officer
Policy and Strategic Services
Fermanagh and Omagh District Council
Telephone: 0300 303 1777, ext 21187
Textphone: 028 8225 6216
Website: www.fermanaghomagh.com
Twitter and Facebook: [fermanaghomagh](#)

From: David Shaw <support@fodc.freshdesk.com>
Sent: 29 June 2018 16:20
To: Andrea McCourt
Cc: Caoimhe McDaid
Subject: Re: host 3 large files on website

Hi Andrea,

Apologies this has taken so long.

Here are the links:

19/07/2018

Mail – imelda.mccarron@fermanaghomagham.com

<http://fodc.online/responses/2016.zip>

<http://fodc.online/responses/2017.zip>

<http://fodc.online/responses/2018.zip>

The files are hosted on a separate council site but the links will work seamlessly.

Thanks
David

Green Road FOI - Documents ready for upload to FODC website

Caoimhe McDaid

Fri 06/07/2018 14:56

To: David Shaw <david.shaw@fermanaghomagh.com>;

Cc: Andrea McCourt <andrea.mccourt@fermanaghomagh.com>; Finbar Maguire <finbar.maguire@fermanaghomagh.com>; Clarissa Beacom <clarissa.beacom@fermanaghomagh.com>; Imelda McCarron <imelda.mccarron@fermanaghomagh.com>; Dean Carroll <dean.carroll@fermanaghomagh.com>;

Hi David

The amendments have now been made on 2016/2017/2018. They are located at:
R:\CE\Policy and Strategic Services\Access to Information\Freedom of Information & Environmental Information\Responses\Green Road.

Please would you upload 2016/2017/2018 to the website as you did previously. Thank you

Kind Regards

Caoimhe McDaid

Policy and Strategic Services

Telephone: 0300 303 1777 ext 21186

Email: caoimhe.mcdaid@fermanaghomagh.com

Fax (Townhall): 028 66 322 024

19/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

FAO:

Imelda McCarron

Wed 11/07/2018 15:42

To:

Afternoon :

Further to Robert's call this afternoon, I can confirm that the extension requested for your submission for the Public Right of Way at Greencastle has been agreed.

I trust this is satisfactory, however should you have any queries please do not hesitate to contact me.

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*

RE: Green Road

Imelda McCarron

Fri 06/07/2018 17:32

To: Geraldine O'Reilly <geraldine.oreilly@fermanaghomagh.com>;

Hi Geraldine

I tried calling him back yesterday but will try again when I'm back in the office.

Thanks
Imelda

Sent from my Windows 10 phone

From: Geraldine O'Reilly
Sent: Friday, July 6, 2018 5:06:05 PM
To: Imelda McCarron
Cc: Clarissa Beacom
Subject: Green Road

Imelda

I hope all is well with you. is keen to speak to you regarding the Green Road. He has been trying to speak to you for some time. Please can you call him on . He said you can call him any time.
Many thanks

Geraldine

Geraldine O' Reilly
Customer Services Team Leader
Fermanagh and Omagh District Council

Tel: 0300 303 1777 **Ext** 20803
Mob: 07769 165187
Text Phone: 028 8225 6216
W: fermanaghomagh.com
Twitter & Facebook: fermanaghomagh

Fw: Green Road, Omagh

Robert Gibson

Thu 19/07/2018 08:42

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

Cc: Clarissa Beacom <clarissa.beacom@fermanaghomagh.com>;

Hi Imelda,

For the files and your information.

Regards

Robert

From: Robert Gibson
Sent: 18 July 2018 15:52
To:
Subject: Re: Green Road, Omagh

Dear ,

Thank you for your email and my apologies for not writing to you sooner. I see that you contacted Brendan Hegarty previously, during a time that I was on annual leave and I was to contact you on my return. I apologise for not doing this until now.

I am indeed leading on this and can provide an update. The Council had undertaken a process of investigation into the Green Road, Greencastle ,Omagh to ascertain the position regarding it being a Public Right of Way or not. While we thought that this could be concluded earlier this year we received a number of requests for additional time to permit additional information to be provided. We have based, on legal advice agreed to extend the time to provide further information until 3 August 2018 and due to a large number of Freedom of Information requests put the details of the investigation to date on the website, redacted as necessary.

We hope to take a report to the Council in September or October 2018.

On another note I would also like to confirm that we did contact the Department for Communities regarding having the Green Road registered as an Historic Monument. The Department's Historic Environment Division has informed us that HED does not currently have a policy on designating historic roads.

I hope that this is helpful. Please do not hesitate to contact me if you require further information.

Yours sincerely

Robert Gibson

From:
Sent: 17 July 2018 17:00

To: Robert Gibson
Subject: Green Road, Omagh

Robert Gibson
Director of Community, Health and Leisure
Fermanagh & Omagh District Council

Robert

Ref. Historic Green Road - public right of way

A number of people have been asking for an update on progress that has been made on the moving forward of the Council decision that the old historic route of the Green Road in Greencastle, Omagh have a public right of way status.

I understand that you are leading on this matter within Council. I would appreciate an early update on how the matter is progressing and of the planned timetable for completion.

Thank you

Sent from my iPad

Re: Green Road FOI - Documents ready for upload to FODC website

Imelda McCarron

Thu 19/07/2018 09:33

To: Caoimhe McDaid <Caoimhe.McDaid@fermanaghomagh.com>;

Caoimhe

Did IT ever action this?

Thanks
Imelda

From: Caoimhe McDaid
Sent: 06 July 2018 14:56
To: David Shaw
Cc: Andrea McCourt; Finbar Maguire; Clarissa Beacom; Imelda McCarron; Dean Carroll
Subject: Green Road FOI - Documents ready for upload to FODC website

Hi David

The amendments have now been made on 2016/2017/2018. They are located at:
R:\CE\Policy and Strategic Services\Access to Information\Freedom of Information & Environmental Information\Responses\Green Road.

Please would you upload 2016/2017/2018 to the website as you did previously. Thank you

Kind Regards

Caoimhe McDaid
Policy and Strategic Services

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

19/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

Re: Green Road FOI - Documents ready for upload to FODC website

Thu 19/07/2018 11:29

To: Caoimhe McDaid <Caoimhe.McDaid@fermanaghomagh.com>;

Thanks Caoimhe. Has Andrea let [redacted] know it's available, as before?

Ta
Imelda

From: Caoimhe McDaid
Sent: 19 July 2018 11:09
To: Imelda McCarron
Subject: Re: Green Road FOI - Documents ready for upload to FODC website

Hi Imelda

Yes, see link below.

<https://www.fermanaghomagh.com/your-council/freedom-of-information/>

Freedom Of Information – Fermanagh & Omagh District Council

www.fermanaghomagh.com

The Freedom of Information Act 2000 gives the public a general right of access to many kinds of information held by public authorities. The aim of the Act is to increase openness and accountability in the public sector.

Kind Regards

Caoimhe McDaid
Policy and Strategic Services

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

From: Imelda McCarron
Sent: 19 July 2018 09:33:56
To: Caoimhe McDaid
Subject: Re: Green Road FOI - Documents ready for upload to FODC website

Caoimhe

Did IT ever action this?

Thanks
Imelda

From: Caoimhe McDaid
Sent: 06 July 2018 14:56
To: David Shaw
Cc: Andrea McCourt; Finbar Maguire; Clarissa Beacom; Imelda McCarron; Dean Carroll
Subject: Green Road FOI - Documents ready for upload to FODC website

Hi David

The amendments have now been made on 2016/2017/2018. They are located at:
R:\CE\Policy and Strategic Services\Access to Information\Freedom of Information & Environmental Information\Responses\Green Road.

Please would you upload 2016/2017/2018 to the website as you did previously. Thank you

Kind Regards

Caoimhe McDaid
Policy and Strategic Services

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

Re: Freedom of information request ref. PROW Assertion/ Green Road

Thu 19/07/2018 11:36

To: _____ >

Further to your request below, the Council received a high number of Freedom of Information requests since we received yours and it was decided to upload all of the information on to the website for viewing. I am now making you aware that all of the information can be viewed at <https://www.fermanaghmagh.com/your-council/freedom-of-information/>

Best regards
Imelda

From: Imelda McCarron
Sent: 21 March 2018 17:06
To: _____
Cc: Clarissa Beacom
Subject: Re: Freedom of information request ref. PROW Assertion/ Green Road

Dear Mr

The Access to Information Panel met to consider your Freedom of Information request dated 15.02.2018. The Panel took into consideration the fact that a member of Council staff contacted you to ask you to refine your request.

After careful consideration, the Panel concluded that to deal with your entire request would exceed the time limit (18 hours). However, we are able to forward the attached documents, PROW Evidence Forms, Detailed Survey of alleged PROW, Redacted evidence forms, detailed map of the alleged PROW, meeting notes and diary entries for meetings held between Dalradian representatives and FODC staff, which have been released for previous freedom of information requests and the most recent meeting notes dated 26.02.2018.

The remainder of the information is being withheld under the Freedom of Information Act 2000 **Section 12(1) Requests where the cost of compliance exceeds the appropriate limit** – Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

If you are unsatisfied with this response, you may request an internal review of the decision by writing to Brendan Hegarty, Chief Executive, Fermanagh and Omagh District Council, Townhall, 2 Townhall Street, Enniskillen, Co Fermanagh, BT74 7BA.

Kind Regards
Imelda

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

From: Clarissa Beacom

Sent: 22 February 2018 09:58

To: :

Subject: Fw: Freedom of information request ref. PROW Assertion/ Green Road

Mr :

Reference: :

Thank you for your email of 15 February 2018.

Your request has been allocated reference number .

Your request shall be dealt with as soon as possible and you will be issued with a response no later than 15 March 2018.

Kind Regards,

Clarissa Beacom

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

Tel: 0300 303 1777 **Extension:** 21101

W: fermanaghomagh.com

Twitter & Facebook: fermanaghomagh

From: :

Sent: 15 February 2018 01:47 PM

To: Information

Subject: Freedom of information request ref. PROW Assertion/ Green Road

Dear Sirs,

I am writing to request under the Freedom of Information Act 2000 all information (including any emails, meeting notes/minutes and evidence/other submissions) relating to and including Councils investigation as part of the PROW assertion process for the Green Road, Greencastle Co Tyrone.

Your assistance is appreciated.

Yours Sincerely

Sent from my Samsung Galaxy smartphone.

Re: _____

Thu 19/07/2018 11:40

To: _____@fermanaghomagh.com>;

Dear _____

Further to your request below, the Council received a high number of Freedom of Information requests since we received yours and it was decided to upload all of the information on to the website for viewing. I am now making you aware that all of the information can be viewed at <https://www.fermanaghomagh.com/your-council/freedom-of-information/>

Best regards
Imelda

From: Imelda McCarron
Sent: 04 April 2018 16:15
To: _____
Cc: Clarissa Beacom
Subject: _____

Dear _____

The Access to Information Panel met previously to consider a request for the same information as you requested, and after careful consideration the Panel concluded that to deal with your entire request would exceed the time limit (18 hours). However, we are able to forward the attached documents, PROW Evidence Forms, Detailed Survey of alleged PROW, Redacted evidence forms, detailed map of the alleged PROW, meeting notes and diary entries for meetings held between Dalradian representatives and FODC staff, which have been released for previous freedom of information requests and the most recent meeting notes dated 26.02.2018.

The remainder of the information is being withheld under the Freedom of Information Act 2000 Section 12(1) Requests where the cost of compliance exceeds the appropriate limit – Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

If you are unsatisfied with this response, you may request an internal review of the decision by writing to Brendan Hegarty, Chief Executive, Fermanagh and Omagh District Council, Townhall, 2 Townhall Street, Enniskillen, Co Fermanagh, BT74 7BA.

Kind 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*

Fw: Green Road PROW info

Robert Gibson

Mon 23/07/2018 15:25

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

From: Robert Gibson
Sent: 23 July 2018 15:18
To: Brendan Hegarty
Subject: Re: Green Road PROW info

Brendan,

Will do.

Robert

From: Brendan Hegarty
Sent: 23 July 2018 15:06
To: Robert Gibson
Subject: Fw: Green Road PROW info

Robert
can you please draft a response to this for me ASAP stating the current factual position.

Brendan

From:
Sent: 23 July 2018 14:51
To: Robert Irvine (Councillor); Josephine Deehan (Councillor); Barry McNally (Councillor); Sheamus Greene (Councillor); Bert Wilson (Councillor); Mary Garrity (Councillor); Victor Warrington (Councillor); Marty McColgan (Councillor); Brendan Hegarty; Mark Buchanan (Councillor); Frankie Donnelly (Councillor); Paul Robinson (Councillor); Stephen McCann (Councillor); Barry Doherty (Councillor); John Feely (Councillor); Sean Donnelly (Councillor); Alex Baird (Councillor); Keith Elliott (Councillor); David Mahon (Councillor); Raymond Farrell (Councillor); Joanne Donnelly (Councillor); Errol Thompson (Councillor); Anthony Feely (Councillor); AnneMarie Fitzgerald (Councillor); Sean Clarke (Councillor); Diana Armstrong (Councillor); Garbhan McPhillips (Councillor); Debbie Coyle (Councillor); Paul Blake (Councillor); sorchamcanespies@fermanaghomagh.com; Allan Rainey (Councillor); John Coyle (Councillor); Thomas O'Reilly (Councillor); Bernice Swift (Councillor); Glenn Campbell (Councillor); Tommy Maguire (Councillor); Brendan Thomas Gallagher (Councillor); Chris Smyth (Councillor); RoseMarie Shields (Councillor); Howard Thornton (Councillor); Brian McCaffrey (Councillor)
Subject: Green Road PROW info

To:
Brendan Hegarty, Chief Executive, FODC

&

Fermanagh & Omagh District Councillors

Dear Mr Hegarty & Councillors
Re. Threat of legal challenge to FODC re PROW Assertion for the Green Road

The attention of : _____ has been drawn to details made available to the public through freedom of information disclosure, on the threat to challenge the competence of FODC to assert the Public Right of Way (PROW) for the ancient highway and public right of way in Greencastle (Co.Tyrone) commonly known as the Green Road. I would wish to check that the Council has been kept fully informed on these matters.

It is important that FODC as the local authority and statutory body with responsibility for these matters proceed to effect the legitimate Assertion on this public right of way. It is inappropriate and wrong that the Council should be diverted from its proper course of action by corporate or other bullying or threats of any kind. It is most unacceptable publicly and a breach of FODC duty to the people of this area that Council is unreasonably delaying in completing the Assertion of the Green Road PROW.

Yours sincerely

Green Road - progress to date

Imelda McCarron

Mon 23/07/2018 17:41

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

 1 attachments (14 KB)

230718_Progress_to_Date.docx;

Robert,

Apologies it took me so long to pull this together. Please see attached document outlining the key milestones to date including key correspondence, committee reports and delays.

If you require anything further please let me know.

Imelda

Imelda McCarron

Countryside Recreation Officer

Fermanagh and Omagh District Council

T: 0300 303 1777

M: 07702 919 798

E: imelda.mccarron@fermanaghomagh.com

Progress to date regarding the assertion of the Green Road PRow

Date	
Feb 2016	Council received 180 lobby letters from Concerned Community of Greencastle, Rousky, Gortin and surrounding area requesting the Council to investigate the status of a PRow between Greencastle and Rousky
April 2016	Those with eligible addresses from the lobby letters were sent PRow investigation forms and documentary evidence forms
May 2016	All landowners, including Dalradian were issued a letter to let them know the investigation had begun. Each were issued with landowner evidence forms and landowner details confirmation forms.
October 2016	All landowners were written to again informing them the investigation was ongoing and a detailed survey was being carried out. Permission to walk the land was sought and no objections were submitted. Dalradian walked their section of the road with Council officers.
October 2016	25 secondary evidence groups were contacted with evidence forms
December 2016	A report was submitted to the R&C committee outlining the ongoing investigation into the Green Road PRow and permission was granted to spend £750 non a barrister's opinion following the CRO's report
April 2017	A confidential report was taken to R&C committee with the action
May 2017	Letter was issued to all landowners informing them that the Council did indeed think a PRow existed along the route and they were provided with a copy of the assertion report. All comments were requested by 02.06.2017
May 2017	representing submitted an FOI looking for the evidence that was used to support the CRO's assertion report. They also requested an extension for responding to the proposed assertion of the PRow
June 2017	Report was taken to Council to seek the approval to spend £900 on the Barrister rather than the original £750. Approval was granted
June 2017	Letter of complaint received from representing I regarding the assertion process and that FODC had not carried out the process with due diligence
July 2017	Regarding the FOI submitted in May (there was 5 pieces of evidence, one of which was a detailed report commissioned and paid for by one of the local community groups. This originally was not furnished to due to FOI legislation), submitted an appeal for the information that was held back

August 2017	Regarding the detailed report commissioned by the community group, the group had sought legal advice and requested that it was not released to [redacted] representing [redacted]
January 2018	[redacted] appeal was upheld and based on legal advice and with agreement from the legal team representing the community group, the detailed report was furnished to [redacted]. They were given 28 days to respond.
January 2018	A letter was issued to all landowners letting them know that due to ongoing discussions with interested stakeholders the assertion process was delayed however, Council was now in a position to proceed and it was intended to take a report to committee in February 2018 to confirm the assertion
February 2018	Another FOI was submitted, this time from [redacted] who was representing one of the landowners
February 2018q	P.Kingston spoke directly to [redacted] from [redacted] (nting [redacted]) and granted a further extension for consideration of the documents received. [redacted] also felt they hadn't had enough time to be consulted and that FODC were not carrying out their duty with due diligence and requested a meeting
February 2018	[redacted] and [redacted] met with P.Kingston, R.Gibson and IMcCarron
February 2018	A letter was issued to all landowners to let them know deferral of assertion due to ongoing discussions
07 March 2018	FODC received judicial review pre-action protocol from [redacted]. They had a complaint that the assertion process was not carried out with due diligence
16 March 2018	Another FOI received – [redacted] representing [redacted]
17 April 2018	P.Kingston issued response to [redacted] regarding the judicial review pre-action. A further 3 weeks for a reply was granted.
23 April 2018	Further [redacted] submitted from another [redacted]
24 April 2018	Further [redacted] submitted from [redacted] s representing [redacted]
10 May 2018	Request received from [redacted] looking for an extension to respond to the information furnished to them.
29 May 2018	Confirmation sent to [redacted], that extension would be granted for 4 weeks.
5 July 2018	Letter received from [redacted] looking yet again a further extension to 3 rd August. Extension was confirmed via phone call with RG on 11.July
July 2018	All of the information held on file regarding the Green Road was uploaded online for the public to view

Fw: Green road & recent damage to the PROW

Robert Gibson

Fri 27/07/2018 16:41

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

 8 attachments (2 MB)

IMG-20180723-WA0020.jpg; IMG-20180723-WA0019.jpg; IMG-20180723-WA0017.jpg; IMG-20180723-WA0018.jpg; IMG-20180723-WA0016.jpg; IMG-20180723-WA0015.jpg; IMG-20180723-WA0013.jpg; IMG-20180723-WA0014.jpg;

From: Brendan Hegarty
Sent: 24 July 2018 13:00
To: Robert Gibson
Subject: Fwd: Green road & recent damage to the PROW

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From: .
Sent: Tuesday, July 24, 2018 12:33:15 PM
To: Brendan Hegarty
Cc:
Subject: Green road & recent damage to the PROW

Brendan Hegarty CEO
Fermanagh & Omagh District Council

Brendan

We are even more concerned now regarding the dilatory approach to Asserting the PROW that people feel has been adopted by FODC in light of the recent disclosures.

Our attention has been drawn to the recent damage to the right of way seriously affecting several metres of the Green Road after so many hundred years! FODC must act on this matter.

SOS is about to issue a statement challenging FODC to expedite the PROW assertion process with urgency.

Find attached photos of the damage and reclamation works on the Green Road....(in the vicinity of two turbines)

30/07/2018

Mail – imelda.mccarron@fermanaghomagham.com





Fw: Green Road Public Right of Way

Robert Gibson

Fri 27/07/2018 16:44

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

From: Robert Gibson
Sent: 25 July 2018 07:00
To: Brendan Hegarty
Subject: Re: Green Road Public Right of Way

Brendan No matter which way the Council decides on the PRow it is expected that there will be a legal challenge. This is a potential legal challenge but not a real one as yet. If we had raised it as such without a Barrister's opinion then my concern would be that during the process we could have been accused of selecting pieces of information to influence the Council's decision. Robert

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From: Brendan Hegarty
Sent: Wednesday, July 25, 2018 6:52:07 AM
To: Robert Gibson
Subject: Re: Green Road Public Right of Way

Robert

It is not good that the public are aware of this and yet the Council has not been advised. I would expect that there will be some negativity generated around this

Brendan

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From: Robert Gibson <robert.gibson@fermanaghomagh.com>
Sent: Wednesday, July 25, 2018 06:38
To: Brendan Hegarty
Subject: Re: Green Road Public Right of Way

Good morning Brendan, The Councillors have not yet been formally advised of the potential legal challenge. At present the Council is still in the evidence gathering process which should finish in August 2018. Once this process is complete a Barrister's opinion on all of the information will be sought so that the Council can make an informed decision. The potential legal challenge will also be analysed so that the Council has a legal opinion on that also. Regards Robert

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From: Brendan Hegarty
Sent: Tuesday, July 24, 2018 8:36:54 PM
To: Robert Gibson
Subject: Fwd: Green Road Public Right of Way

30/07/2018

Mail – imelda.mccarron@fermanaghomagh.com

Robert

Sorry for bothering you when you are away.

Can you please give me a short response that can be issued in response to this request

This will probably come up at the Council meeting this week but at least Philip will be present

Brendan

Get Outlook for iOS

From: :

Sent: Tuesday, July 24, 2018 20:26

To: Brendan Hegarty

Subject: Green Road Public Right of Way

Dear Brendan, Could I please ask have the Councillors been informed of the potential legal challenge to the Council's proposed assertion of the Green Road Public right of way as disclosed in the recent FOI details contained on the councils web site? Regards,