

FW: Green Lane - Public Right-of-Way

Philip Kingston <Philip.Kingston@derrystrabane.com>

Fri 5/6/20 10:11 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

 2 attachments (760 KB)

Miscellaneous 3 Template.doc; Incoming Mail from Misc Correspondent 2.html;

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John,

Documentation as referenced earlier.

Regards,
Philip.

Sent from Mail for Windows 10

From: Paula Deery

Sent: 05 June 2020 09:54

To: Philip Kingston

Subject: Re: Green Lane - Public Right-of-Way

Philip

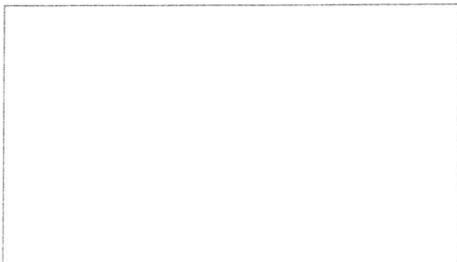
As requested:-

Draft Pre-Action Letter
Advices & Civil Bill

Paula Deery
Administrative Assistant (Legal Services)
Derry City & Strabane District Council
98 Strand Road
Derry
BT48 7NN

Tel: (028) 71 253 253 Extn 6762

www.derrystrabane.com



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

Report to:	Regeneration and Community Committee	Agenda Item: X
Report Title:	Report of the Director of Community, Health and Leisure	(Paper X)
Date:	9 June 2020	
Report by:	Director of Community, Health and Leisure	
For Publication:	Yes	
If 'not for publication', Insert reference to grounds upon which information is deemed 'confidential' [ref Local Government (Northern Ireland) Act 2014 section 42(2), (3)] or 'exempt' [ref Local Government (Northern Ireland) Act 2014 section 42(4) Schedule 6]:		
(i) Confidential grounds:	N/A	
(ii) Exempt grounds:	N/A	

1. Relevant Background and Introduction

1.1 The purpose of this report is to:

1.1.1) inform Members of the instances when Enniskillen Castle and Strule Arts Centre were illuminated for charitable causes from December 2019 until March 2020, in accordance with the Councils External Lighting Policy 2015; and

1.1.2) to provide Members with an update on the Green Road Public Right of Way (PRoW), Greencastle.

1.2.1 Illuminations

Members will recall that approval was granted at the Council Meeting on 5 November 2019 that future requests for illumination of Council buildings could be delegated to Officers and reported retrospectively to Committee, provided that they were not contentious requests.

1.2.2

Green Road Public Right of Way

At the Council Meeting on 4 December 2018 it was resolved that the Council asserts the Green Road as a PRoW and requested officers to have it vindicated in the County Court. This report provides an update on that process and the next steps to be undertaken.

2. Key Issues

2.1.1 Illuminations

The Council received nine requests to light up Council buildings between December 2019 and end of March 2020. Eight took place, with the request to light up for the Purple Flag Assessment visit not taking place due to the Assessment visit being cancelled because of the COVID – 19 situation. The table below provides a summary of the requests.

Proposed Date	Applicant Organisation	Event being marked	Comments
3/12/19	Disability Action NI	The International Day of Disabled People	Both buildings - Purple
11/12/19	NSPCC	Get Your Sparkle on Day	Both buildings - Green
4/01/20	Aisling Centre	30-year Celebration of Aisling Centre	Castle Only – Pale Blue
31/01/20 3/02/20	FODC	Herstory - 4th Annual Year	Both buildings - Purple
22/2/20	Home-Start Enniskillen	20 Years Anniversary	Castle Only - Orange
24/02/20	FODC	Poverty Conference	Both buildings - Red
16/03/20 17/03/20	Project St Patrick	St Patrick's Day	Castle Only - Green
17/03/20	FODC	St Patrick's Day	Strule Arts Centre Only - Green
21/03/20	FODC	Purple Flag	Assessment visit cancelled (COVID-19)

2.1.2 Green Road Public Right of Way

Discussions have been ongoing with our barrister and junior counsel who have been dealing with the issue on behalf of the Council. There has been a delay in progressing the work from the junior counsel but proceedings, and a letter of claim, have been drafted. The Letter of Claim must be sent out to each landowner along the route to obtain their approval, via signature, that they are content with the route being asserted as a PRow. For those landowners who do not provide approval, the Council will have to issue court proceedings to the County Court. This fact will be included in the Letter of Claim. This process was about to commence when the COVID crisis started and it was decided to postpone the issuance of the letters.

Next steps in the process of assertion include:

- Review the list of landowners to establish that no details have changed since the Council were last in contact
- Personally contact each landowner to inform them that the Letter of Claim for assertion of the Green Road as a PRow is on its way. In this way landowners will not be shocked by inclusion in the letter of the prospect of being taken to Court. This process could be completed in the next 4-6 weeks.
- Issue Letter of Claim to landowners and allow a period of up to 4 weeks for return.
- For those who do not agree with the proposed assertion of the Green Road as a PRow issue court proceedings to the County Court.
- Await the cases to be heard in the County Court - this could take a period of 6-12 months from the date of lodgement.

At the end of this process the PRow may or may not be established.

3. Resource Implications

3.1 Financial

3.1.1 Illuminations - There are no financial implications involved

3.1.2 Green Road Public Right of Way – There are potential costs of issuance of proceedings in the County Court. The magnitude of these will be dependant on the number of cases, if any, which will be required to go to court.

3.2 Human Resources

3.2.1 Illuminations - This can be carried out by existing employee resources

3.2.2 Green Road Public Right of Way - Officer time, included in the normal budgets.

3.3 Assets and Other Implications

3.3.1 Illuminations - N/A

3.3.2 Green Road Public Right of Way -

4. Equality and Good Relations Implications

4.1 Equality

4.1.1 Illuminations - The uniform impact across all Section 75 groups is positive.

4.2.2 Green Road Public Right of Way – There are no negative Equality implications.

4.2 Good Relations

4.2.1 Illuminations - This initiative will have a positive impact on good relations

4.2.2 Green Road Public Right of Way – There are no negative Good Relations implications.

5. Sustainable Development Implications

5.1 Illuminations - This initiative has a positive impact on the social sustainability pillar of the sustainable development plan.

5.2 Green Road Public Right of Way – This initiative supports the Social pillar of sustainable development.

6. Rural Proofing Implications

6.1 Illuminations - There are no adverse effects on rural areas.

6.2 Green Road Public Right of Way – There are no negative Rural Proofing implications.

7. District Electoral Areas Affected

7.1 Illuminations - Enniskillen and Omagh

7.2 Green Road Public Right of Way – Mid Tyrone

8. Recommendation

It is recommended that the Council:

i) notes the illuminations carried out between December 2019 and March 2020; and

ii) notes the update on the Green Road Public Right of Way and the future steps to be taken in assertion of the route.

9. Appendices and Attachments

N/A

10. Background Documents

N/A

Key to Abbreviations:

PRoW – Public Right of Way

Fw: Conversation on Green Road

Imelda McCarron <imelda.mccarron@fermanaghomagh.com>

Fri 5/6/20 8:37 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

Morning John,

I tried giving you a quick call this morning re: Green Road. I'm on extension 21171 or if you can't get through fire me a wee email and I'll ring out - I've no mobile reception at the caves.

Thanks
Imelda

From: Creaa McManus <creea.mcmanus@fermanaghomagh.com>

Sent: 04 June 2020 17:41

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

Subject: Re: Conversation on Green Road

Yes - give him a call any time before 12 or anytime after 1

he is on Roberts old extension 21002 or you can get him on the mobile 078 8046 9978

he actually just called me there about something else so he knows you will be calling 👍

Creaa McManus

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

Tel: 0300 303 1777 **Extension:** 21175

Web: fermanaghomagh.com

Twitter & Facebook: fermanaghomagh

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

Sent: 04 June 2020 17:06

To: Creaa McManus <creea.mcmanus@fermanaghomagh.com>

Subject: Re: Conversation on Green Road

Hey

Thanks for sending this through. He never rang no, should I call him tomorrow?

Cheers
Imelda

From: Creaa McManus <creea.mcmanus@fermanaghomagh.com>

Sent: 04 June 2020 15:48

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

Subject: Re: Conversation on Green Road

Did John call you on Tuesday Re this?

The attached report is being published today - just thought I would let you see it so that you are aware it is going up

Creea McManus

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

Tel: 0300 303 1777 **Extension:** 21175
Web: fermanaghomagh.com
Twitter & Facebook: fermanaghomagh

From: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Sent: 02 June 2020 09:44
To: Creea McManus <creea.mcmanus@fermanaghomagh.com>
Subject: Re: Conversation on Green Road

Morning

Just back in the office and picking up emails - can you speak with JB and see when it suits for me to contact him? Don't want to blind call him in case he's flat out

Thanks

From: John Boyle <john.boyle@fermanaghomagh.com>
Sent: 29 May 2020 16:37
To: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Subject: Conversation on Green Road

Imelda,
there have been a number of queries this week on the PROW for the Green Road. I have spoken with Philip Kingston and he tells me that you are the person who has done a lot of work in relation to this. Whilst I know where we are at in the process I would like to have a conversation with you as to how we move ahead. Can you please give me a call when you get a chance to have a chat - probably best to get me on the mobile.

Thank you
John

John Boyle

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

Telephone: 0300 303 1777
Extension: 21002

Mobile: 07880469978

Fw: Green Lane - Public Right-of-Way

John Boyle <john.boyle@fermanaghomagh.com>

Fri 05/06/2020 14:52

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

📎 2 attachments (760 KB)

Incoming Mail from Misc Correspondent 2.html; Template letter to landowners.doc;

Imelda,

I had a conversation with Philip this afternoon.

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ek

p is

ar.

Can I please ask you to progress confirmation, as far as possible, that landowners are still in-situ, as we have on our files and then commence a phone around of them as above. I know you are very busy, and actually not working in the area any more, but I am keen to move this process on as quickly as possible.

Thank you so much.
Have a good weekend
John

John Boyle

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

Telephone: 0300 303 1777
Extension: 21002

From: Philip Kingston <Philip.Kingston@derrystرابane.com>
Sent: 05 June 2020 10:10 AM
To: John Boyle <john.boyle@fermanaghomagh.com>
Subject: FW: Green Lane - Public Right-of-Way

CAUTION: This message originates from outside our organisation. Consider carefully whether you should click on any links, open any attachments or reply. If in doubt, forward to helpdesk@fermanaghomagh.com

John,

Documentation as referenced earlier.

Regards,
Philip.

Sent from [Mail](#) for Windows 10

From: [Paula Deery](#)
Sent: 05 June 2020 09:54
To: [Philip Kingston](#)
Subject: Re: Green Lane - Public Right-of-Way

Philip

As requested:-

Draft Pre-Action Letter
Advices & Civil Bill

Paula Deery
Administrative Assistant (Legal Services)
Derry City & Strabane District Council
98 Strand Road
Derry
BT48 7NN

Tel: (028) 71 253 253 Extn 6762

www.derrystrabane.com



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Derry City & Strabane
District Council
Comhairle
Chathair Dhoire &
Cheantar an tSratha Báin
Derry Cittie & Strabane
Destríck Cooncil

Your Reference:

Our Reference: 100040.00154/PJK/PRD

XXX

Dear

Re: Green Lane - Public Right-of-Way

We are instructed by Fermanagh and Omagh District Council. In accordance with provisions set out in the Access to the Countryside (NI) Order 1983 the Council, pursuant to Article 3 of that Order asserts that the route located between Greencastle and Rouskey, County Tyrone which is shown on the map attached hereto is a public right-of-way. You are the owners of land on which the public right-of-way is located. The Council intends to issue proceedings seeking a declaration that the route located shown on the map is a public right-of-way on foot and an order that you or any other owner of land along the route shall be prohibited and restrained from obstructing and interfering with the public enjoyment of the right-of-way.

Before issuing proceedings Council would like to give you this opportunity to confirm in open correspondence that you agree to the existence of the public right-of-way. I would be grateful to hear from you in this regard within 3 weeks from the date hereof. If we do not hear from you then proceedings will be issued without further or other notice and use may be made of this correspondence in respect of costs.

Yours faithfully

Philip Kingston LLB

Derry

C/o Council Offices
98 Strabane Road
Derry
BT48 4BH

Strabane

C/o Council Offices
17 Derry Road
Strabane
BT82 8UY

+44 (0) 2871 255 255
info@dcs.strabane.com
www.derrystrabane.com

f Derry City & Strabane District Council
t @dcsCouncil

Lead Legal Services Officer

philip.kingston@derrystrabane.com

Tel. No. (028) 7137 6502

Please respond to Strand Road Office Enc

DRAFT

Re: LPS Searches

Christine Clingen <christine.clingen@fermanaghomagh.com>

Fri 05/06/2020 17:11

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

Cc: Sandra Patterson <sandra.patterson@fermanaghomagh.com>

Hi Imelda

I'll leave this one in Sandra's very capable hands!

Regards
Christine

Christine Clingen

Property Services Manager

Fermanagh and Omagh District Council

Mobile: 07857845989

Tel: 0300 303 1777 Ext 20101

E-mail: christine.clingen@fermanaghomagh.com

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

Sent: 05 June 2020 15:34

To: Christine Clingen <christine.clingen@fermanaghomagh.com>; Sandra Patterson <sandra.patterson@fermanaghomagh.com>

Subject: LPS Searches

Afternoon Christine, Sandra

Hope you're are both keeping well. I'm hoping you can point me in the right direction - The Green Road PRow has been sitting with the barrister for some time but now John Boyle is keen to get it moving again.

Before we can progress any further we need to issue all landowners with a letter of intent. Philip Kingston and John want me to check to ensure that all the folios along the route are still registered to the same landowners as back in 2016.

I have attached a map and a list of landowners - this would have originally been done by Andrew Boyd. I no longer have access to LPS so I can't carry out the searches but would either of you be able to do it or arrange for me to have access to do it?

Many thanks
Imelda

Imelda McCarron

Countryside Management Officer

Marble Arch Caves UNESCO Global Geopark

43 Marlbank Road

Legnabrocky

Florencecourt

Re: Green Lane - Public Right-of-Way

John Boyle <john.boyle@fermanaghomagh.com>

Mon 08/06/2020 17:45

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

Imelda,

Thank you fro your work on this. Would it please be possible to get a copy of the spreadsheet on the landowners along the route. I dont need to know name but how many and numbers who agree, object, didn't know at that time. When was that analysis also carried out?

Thanks again

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

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

Sent: 05 June 2020 3:04 PM

To: John Boyle <john.boyle@fermanaghomagh.com>

Subject: Re: Green Lane - Public Right-of-Way

Thanks for this John. I will start working with estates to confirm the landowners and come back to you as soon as possible.

Have a good weekend

Imelda

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 05 June 2020 14:52

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

Subject: Fw: Green Lane - Public Right-of-Way

Imelda,

I had a conversation with Philip this afternoon.

W.

d

κ

Can I please ask you to progress confirmation, as far as possible, that landowners are still in-situ, as we have on our files and then commence a phone around of them as above. I know you are very busy, and actually not working in the area any more, but I am keen to move this process on as quickly as possible.

Thank you so much.
Have a good weekend
John

John Boyle

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

Telephone: 0300 303 1777
Extension: 21002

From: Philip Kingston <Philip.Kingston@derrystrabane.com>
Sent: 05 June 2020 10:10 AM
To: John Boyle <john.boyle@fermanaghomagh.com>
Subject: FW: Green Lane - Public Right-of-Way

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John,

Documentation as referenced earlier.

Regards,
Philip.

Sent from [Mail](#) for Windows 10

From: [Paula Deery](#)
Sent: 05 June 2020 09:54
To: [Philip Kingston](#)
Subject: Re: Green Lane - Public Right-of-Way

Philip

As requested:-

Draft Pre-Action Letter Mrs Kearney
Advices & Civil Bill

Paula Deery
Administrative Assistant (Legal Services)
Derry City & Strabane District Council
98 Strand Road
Derry
BT48 7NN

Tel: (028) 71 253 253 Extn 6762

Re: [SUSPICIOUS MESSAGE] Fw: Green Road Update

John Boyle <john.boyle@fermanaghomagham.com>

Tue 9/6/20 3:02 PM

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

Philip,

In relation to the correspondence received last night in relation to the Green Road PROW would it please be possible to give me a call for 2 minutes to have a quick discussion before tonights meeting.

Thank you

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

Mob: 078 8046 9978

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

Sent: 05 June 2020 9:52 AM

To: John Boyle <john.boyle@fermanaghomagham.com>

Subject: RE: [SUSPICIOUS MESSAGE] Fw: Green Road Update

CAUTION: This message originates from outside our organisation. Consider carefully whether you should click on any links, open any attachments or reply. If in doubt, forward to helpdesk@fermanaghomagham.com

Sorry John,

Can I make that 2pm?

Philip.

Sent from Mail for Windows 10

From: John Boyle

Sent: 05 June 2020 09:39

To: Philip Kingston

Subject: Re: [SUSPICIOUS MESSAGE] Fw: Green Road Update

This Message contains suspicious characteristics and has originated outside your organization.

Philip,

2.30 is great.

Thank you

John

John Boyle

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

Telephone: 0300 303 1777

relation to this over the past number of days. I have read a number of interactions which he had with Robert, and a number of reports which were discussed by Council, but am unsure as to where the process is currently at. Cllr McAleer is also looking to view all files held by FODC in relation to the issue. I would not think there is an issue with this request?

I would appreciate if you could let me know when it would suit you to have a 10 minute conversation.

Many Thanks
John

John Boyle

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

Telephone: 0300 303 1777
Extension: 21002

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Sent: 28 May 2020 4:40 PM
To: John Boyle <john.boyle@fermanaghomagh.com>
Subject: Fw: Green Road Update

Dear John,

A further email for information,

thanks,

Alison

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Sent: 28 May 2020 16:40
To: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>
Subject: Re: Green Road Update

Dear Emmet,

Just in relation to your query, my understanding is that the report was not presented by Robert prior to his departure. I am trying to establish the status of the work completed to date and to clarify when a update report can be brought to Committee.

Regards,

Alison

Alison McCullagh
Chief Executive
Fermanagh and Omagh District Council

From: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>
Sent: 28 May 2020 15:21

I would appreciate if this could be followed up as a matter of urgency if possible?

My understanding is that this was approved by the previous sitting of the Council, and that the process of declaring a public right of way is generally a fairly straightforward matter – can I enquire why, after being approached by local residents and land owners in 2016, and making the declaration in Council in 2017 this declaration is still outstanding?

<https://ulsterherald.com/2017/06/02/greencastle-route-set-declared-right-way/>

Having been again contacted by a number of local land owners in recent weeks, and indeed since my previous e-mail, I was wondering if given the urgency of this issue, and the uncertainty surrounding the return to work of staff within the Council, would it be possible for me to call in at present to have a read through what is currently available?

I am aware there is a skeleton staff currently in the building facilitating key public/Council services, but perhaps something could be arranged – even if it entailed sitting with the file(s) in the glass office located near the door/Reception Desk on the Ground Floor in the Grange?

I would appreciate if this could be considered on behalf of those living locally to the Green Road, as they continue to question the delay in this assertion, having been agreed by Council some years ago?

Thank you,

Emmet

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Sent: 26 May 2020 17:22
To: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>
Subject: Re: Green Road Update

Good afternoon Emmet,

My understanding, and I will check this, was the most up to date legal position and that related to assertion had been reported to the Council. I don't think there have been any new developments.

In terms of access to the documentation, I am sure this can be facilitated when the relevant staff are back at work. Again, I will check this and revert to you.

Regards,

Alison

Alison McCullagh
Chief Executive
Fermanagh and Omagh District Council

From: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>
Sent: 26 May 2020 17:15
To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Subject: Green Road Update

Good afternoon Alison,

I have been contacted by a number of local resident's who have been asking me what stage we are currently at with the Green Road Public Right of Way Declaration, and if there has been any update in relation to this – this is something I had been in contact with Robert about prior to his retirement.

Re: Green Lane - Public Right-of-Way

John Boyle <john.boyle@fermanaghomagh.com>

Thu 11/06/2020 11:18

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

Imelda,

If you could pull anything together that would be a great start.

Thank you

John

John Boyle

Director of Community, Health and Leisure

Fermanagh & Omagh District Council

Telephone: 0300 303 1777

Extension: 21002

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

Sent: 11 June 2020 11:11 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

Subject: Re: Green Lane - Public Right-of-Way

Hi John

Thanks for this. If you need me to pull together anything on the future implications etc. let me know, I'm sure Philip & co will have it well covered anyway

Thanks

Imelda

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 11 June 2020 10:56

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

Subject: Re: Green Lane - Public Right-of-Way

Imelda,

The report to proceed with the process was not approved by the R&C Committee on Tuesday night. Members want more detail on the possible costs of litigation and future implications for the Council of designation of the route. Please continue to work with Estates in confirming landowners, but please hold off on contacting any landowners until further notice.

Thank you

John

John Boyle

Director of Community, Health and Leisure

Fermanagh & Omagh District Council

Telephone: 0300 303 1777

Extension: 21002

From: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Sent: 09 June 2020 8:50 AM
To: John Boyle <john.boyle@fermanaghomagh.com>
Subject: Re: Green Lane - Public Right-of-Way

Morning John

Please see attached spreadsheet and map showing the breakdown of landowners. This work was carried out in 2016 when the PRow first came to the fore. I am still waiting on estates to come back to me with the current land folios.

Thanks
Imelda

From: John Boyle <john.boyle@fermanaghomagh.com>
Sent: 08 June 2020 17:45
To: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Subject: Re: Green Lane - Public Right-of-Way

Imelda,
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John Boyle
Director of Community, Health and Leisure
Fermanagh & Omagh District Council

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Subject: Re: Green Lane - Public Right-of-Way

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Have a good weekend
Imelda

From: John Boyle <john.boyle@fermanaghomagh.com>
Sent: 05 June 2020 14:52

FW: Green Road Update

Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>

Sat 08/08/2020 14:11

To: Creea McManus <creea.mcmanus@fermanaghomagh.com>
(e-mail 18, FOI Request)

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Sent: 05 June 2020 18:05
To: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>
Subject: Re: Green Road Update

Dear Emmet,

I am coming back to you belatedly on this, as I had wanted to check a couple of matters with Philip before responding substantively.

There is a report going to R&C next week, which you might have seen, but in summary the status of the assertion is:

A Letter of Claim has been drafted and this must be sent to each landowner along the route. This process was about to commence when the COVID 19 crisis emerged. The Letter of Claim must be signed by each landowner to say that they are content with the route being asserted as a PROW. If there are any landowners who do not agree, the Council will have to issue court proceedings to the County Court. This fact will be included in the Letter of Claim

An indicative timeline is included in the report, and before issuing the letters of claim, we are currently confirming there have been no changes to the landowners.

In terms of your request to access the information, Philip's advice is that as this is matter which may result in legal proceedings, it would not be appropriate for the documentation to be available for such access. This is the matter which has delayed me responding to you, as I wanted to confirm Philip's opinion, and if you wish, I can have him summarise this for you.

Regards,

Alison

Alison McCullagh
Chief Executive
Fermanagh and Omagh District Council

From: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>
Sent: 28 May 2020 15:21
To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Subject: RE: Green Road Update

Thanks Alison,

I would appreciate if this could be investigated and accommodated and if you could get back to me with any such suggestions as soon as feasible please.

In relation to the Council update, and my discussions with Robert, he had previously advised (in early December 2019) that he had met with the Barrister & Philip Kingston in early August (2019) in Belfast and asked that he progress this as soon as is possible, a call Robert had reiterated in December 2019 when he requested that Philip produce a timeline that could be brought to Council.

As far as I am aware the last meeting with the Barrister was in August 2019, which was to begin taking the assertion process through the courts.

Robert had also hoped to have a confirmed timeline for reporting to the Council in early February, prior to his departure, but I am unsure if this was ever finalised or presented to Council – could you confirm and possibly get back to me if it was?

Thank you,

Emmet

From: Alison McCullagh <alison.mccullagh@fermanaghomagham.com>
Sent: 28 May 2020 14:15
To: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagham.com>
Subject: Re: Green Road Update

Dear Emmet,

Further to your email below, just to confirm there is no change in the Council's position, and to the best of my recollection, Robert had previously provided an update on the various legal matters pertaining to this, prior to his retirement.

An update report has been requested and will be provided to the Committee as soon as it is available.

We are also seeking to accommodate your request to view the papers, but I do need the relevant staff to be able to collate the documentation and have it available for you. I will seek an update as to when we will be able to facilitate this,

Regards,

Alison

Alison McCullagh
Chief Executive
Fermanagh and Omagh District Council

From: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagham.com>
Sent: 28 May 2020 12:20
To: Alison McCullagh <alison.mccullagh@fermanaghomagham.com>
Subject: RE: Green Road Update

Thanks Alison,

I would appreciate if this could be followed up as a matter of urgency if possible?
My understanding is that this was approved by the previous sitting of the Council, and that the process of declaring a public right of way is generally a fairly straightforward matter – can I enquire why, after being approached by local residents and land owners in 2016, and making the declaration in Council in 2017 this declaration is still outstanding?

<https://ulsterherald.com/2017/06/02/greencastle-route-set-declared-right-way/>

Having been again contacted by a number of local land owners in recent weeks, and indeed since my previous e-mail, I was wondering if given the urgency of this issue, and the uncertainty surrounding the return to work of staff within the Council, would it be possible for me to call in at present to have a read through what is currently available?

I am aware there is a skeleton staff currently in the building facilitating key public/Council services, but perhaps something could be arranged – even if it entailed sitting with the file(s) in the glass office located near the door/Reception Desk on the Ground Floor in the Grange?

I would appreciate if this could be considered on behalf of those living locally to the Green Road, as they continue to question the delay in this assertion, having been agreed by Council some years ago?

Thank you,

Emmet

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Sent: 26 May 2020 17:22
To: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>
Subject: Re: Green Road Update

Good afternoon Emmet,

My understanding, and I will check this, was the most up to date legal position and that related to assertion had been reported to the Council. I don't think there have been any new developments.

In terms of access to the documentation, I am sure this can be facilitated when the relevant staff are back at work. Again, I will check this and revert to you.

Regards,

Alison

Alison McCullagh
Chief Executive
Fermanagh and Omagh District Council

From: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>
Sent: 26 May 2020 17:15
To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Subject: Green Road Update

Good afternoon Alison,

I have been contacted by a number of local resident's who have been asking me what stage we are currently at with the Green Road Public Right of Way Declaration, and if there has been any update in relation to this – this is something I had been in contact with Robert about prior to his retirement.

I was also wondering, if it would be possible at some stage in the near future to call into The Grange to view any documentation/papers on the PRow process that the Council hold, to try to bring myself up to speed with what is currently happening, what the reason for any delay in declaring this road a Public Right of Way might be and how this may be finally resolved?

Many thanks,

Emmet

Re: [SUSPICIOUS MESSAGE] Fw: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

John Boyle <john.boyle@fermanaghomagh.com>

Thu 11/6/20 1:59 PM

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

Philip,

Yes I would like to go back to the July Committee with a report. Any information by 26th June would be great.

Thank you

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

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

Sent: 11 June 2020 12:30 PM

To: John Boyle <john.boyle@fermanaghomagh.com>

Subject: RE: [SUSPICIOUS MESSAGE] Fw: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

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John,

I assume you would ideally like this for the July committee? What is your deadline?

Philip.

Sent from Mail for Windows 10

From: John Boyle

Sent: 11 June 2020 12:14

To: Philip Kingston

Subject: [SUSPICIOUS MESSAGE] Fw: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

Importance: High

This Message contains suspicious characteristics and has originated outside your organization.

Philip,

Thank you for returning my call on Tuesday - I tried to get you later but it was much too late.

I had taken the update report on the Green Road to the R&C Committee on Tuesday night, highlighting the proposed next steps in process. However in light of the email below Members

decided to defer any future action pending a report on the costs associated with any potential County Court proceedings and the future protection of the Green Road Public Right of Way.

Would it please be possible to detail the possible financial commitment of proceedings in the County Court, (and possible High Court and Supreme Court, if applicable). I understand it is difficult to estimate costs but an estimate or even a statement on difficulties with possible ranges at each stage would help in the preparation of a future report.

Also, from a legal point of view what are our responsibilities in terms of maintaining a route as a PROW.

Happy to discuss.
Thank you
John

John Boyle

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

Telephone: 0300 303 1777
Extension: 21002

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Sent: 09 June 2020 8:50 AM
To: John Boyle <john.boyle@fermanaghomagh.com>
Cc: Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>
Subject: Fw: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

Good Morning John,

Just for info,

Thanks

Alison

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Sent: 09 June 2020 08:50
To:
Subject: Re: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

Dear

I wish to acknowledge receipt of your email below and to advise that I will report receipt of your correspondence to the Committee this evening.

I have forwarded your correspondence to our legal representatives for their consideration and a response to the main matters raised will be issued in due course.

Yours sincerely,

Alison McCullagh

Re: [SUSPICIOUS MESSAGE] Fw: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

Creea McManus <creea.mcmanus@fermanaghomagh.com>

Thu 11/06/2020 13:04

To: John Boyle <john.boyle@fermanaghomagh.com>

Agenda and supporting papers to be published on **3 July** so ideally well before that to get the paper prepared.

Creea McManus

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

Tel: 0300 303 1777 **Extension:** 21175

Web: fermanaghomagh.com

Twitter & Facebook: fermanaghomagh

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 11 June 2020 12:48

To: Creea McManus <creea.mcmanus@fermanaghomagh.com>

Subject: Fw: [SUSPICIOUS MESSAGE] Fw: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

Creea,

What is the deadline for the July R&C meeting?

Thanks

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

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

Sent: 11 June 2020 12:30 PM

To: John Boyle <john.boyle@fermanaghomagh.com>

Subject: RE: [SUSPICIOUS MESSAGE] Fw: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

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John,

I assume you would ideally like this for the July committee? What is your deadline?

Philip.

Sent from Mail for Windows 10

From: John Boyle

Sent: 11 June 2020 12:14

To: Philip Kingston

Subject: [SUSPICIOUS MESSAGE] Fw: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

Importance: High

This Message contains suspicious characteristics and has originated outside your organization.

Philip,

Thank you for returning my call on Tuesday - I tried to get you later but it was much too late.

I had taken the update report on the Green Road to the R&C Committee on Tuesday night, highlighting the proposed next steps in process. However in light of the email below Members decided to defer any future action pending a report on the costs associated with any potential County Court proceedings and the future protection of the Green Road Public Right of Way.

Would it please be possible to detail the possible financial commitment of proceedings in the County Court, (and possible High Court and Supreme Court, if applicable). I understand it is difficult to estimate costs but an estimate or even a statement on difficulties with possible ranges at each stage would help in the preparation of a future report.

Also, from a legal point of view what are our responsibilities in terms of maintaining a route as a PROW.

Happy to discuss.

Thank you

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Sent: 09 June 2020 8:50 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

Cc: Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>

Subject: Fw: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

Good Morning John,

Just for info,

Thanks

Alison

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Sent: 09 June 2020 08:50

To:

Subject: Re: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

Dear

I wish to acknowledge receipt of your email below and to advise that I will report receipt of your correspondence to the Committee this evening.

I have forwarded your correspondence to our legal representatives for their consideration and a response to the main matters raised will be issued in due course.

Yours sincerely,

Alison McCullagh

Alison McCullagh
Chief Executive
Fermanagh and Omagh District Council

From:

Sent: 08 June 2020 23:42

To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Subject: Fwd: FW: URGENT - Re Proposed FODC legal action regarding the 'Green Road', Greencastle

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WITHOUT PREJUDICE

FAO Chief Executive, Fermanagh & Omagh District Council

Dear Madam,

I note with serious concern from the FODC website, that the *Regeneration and Community Committee* intends to discuss the Council's proposed legal action to adopt the so-called Green Road, near Greencastle, at the meeting on Tuesday 9th June 2020.

Given that I and others have had barely 24hrs notice of this happening, I would like through this email, to urgently place on record my serious concerns about this course of action by FODC.

Frankly, I believe this is one of the most ridiculous legal actions I have ever seen being promoted by a Council and for it be advocated in the midst of a Covid-19 pandemic when Council finances are already in crisis, is shameful.

The so-called Green Road may have been an ancient path in our area, and there are many other variations along that route, but it has not been used as such since the 1800s. Nobody actively uses it because nobody can use it.

In total, the alleged Green Road crosses 23 separate landholdings i.e. 23 separate pieces of land owned by 23 separate landowners. All of these lands are separated by wire fences and clear boundaries so nobody ever walks on the long abandoned Green Road. To suggest otherwise is a nonsense. The Council's own report even said there was no evidence of use!

In terms of the 23 landowners that FODC previously contacted about this matter:

- 8 said it is not a right of way.
- 7 said it is a right of way.
- 8 did not respond.

So, only 7 of the 23 landowners actually agreed that this is a public right of way.

The purpose of this email (written Without Prejudice to our own legal position) is to ask you to immediately defer any further action by the Council on this matter, until you and your Councillors are in possession of ALL the facts around this case.

It is my view that the vast majority of FODC Councillors do not know anything about this issue and worse still, did not realise the precedent they will set if they are successful.

To be clear, even if FODC was successful with this case, it will set a precedent and open the floodgates for a multitude of objector and interest groups, to demand that FODC undertakes similar legal action to assert ancient rights of way over privately owned land throughout the FODC area.

So, for FODC to promote this legal action using ratepayer's money, it is not only unprecedented and highly unusual, it is financially reckless.

These ancient (and abandoned) rights of way exist everywhere in Fermanagh and Tyrone, across the Healy Park site in Omagh, across the Strule Education Campus site, across the Omagh Hospital lands, across farms in Lisnarick and Lisnaskea. It is very easy to find them. They are all around us but they are not publicly used any more.

Some of the questions which I believe need to be put to you, as the Chief Executive of FODC, along with fellow Council Officers, are:

- i. Has the Council considered asking the opinion of the farming communities across Fermanagh and Tyrone, about setting a precedent to use ratepayer money to fund legal actions to publicly adopt ancient rights of way over private land?
- ii. What public consultation has taken place to justify this highly selective and unusual use of ratepayer money?
- iii. Is it normal for a Council to pursue open-ended litigation of this nature, when only 7 of 23 land-owners affected actually agree?
- iv. Has the new Council intake of elected representatives been fully briefed on this issue or is this just a policy that is being followed from the previous Council?
- v. What are the projected legal costs for taking the case through to the High Court and potentially all the way to the Supreme Court in London? (NOTE: These costs will run into hundreds of thousands if not millions of pounds. In addition those Councillors who vote for this will be responsible and potentially personally liable.)

I also note that in the report to the Council meeting on Tuesday 9th June, your Officers are asking Councillors to endorse taking legal action against me and the other landowners who do not wish to have this public right of way adopted across our land. How would you feel if the Council was doing this to you?! I think it is outrageous.

As I have said above, I would urge you and your Council colleagues to suspend and defer any further action and expense by FODC on this matter.

Councillors should demand a full report from your Council officers on the reasons for this action and the projected legal costs.

In my opinion, Councillors should review and debate this matter internally but there is one, and only one, sensible outcome – to terminate and drop this legal action as soon as possible.

Yours sincerely,

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Re: Green Road and Silent Majority

Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>

Mon 15/6/20 12:36 PM

To:

Cc: John Boyle <john.boyle@fermanaghomagh.com>

Dear

thank you for your email. The issue in relation to the Green Road is being dealt with by my colleague, John Boyle, Director of Community, Health and Leisure.

I can confirm that the Council will meet informally this evening, via Webex, with representatives of 'The Silent Majority' group to hear their views. The meeting will be chaired by the Council Chairperson who will ensure that the discussion takes place in a respectful manner and according to the rules of debate observed by Council.

Regards

Kim

Kim McLaughlin
Director of Regeneration and Planning
Tel: 0300 303 1777
Email: kim.mclaughlin@fermanaghomagh.com

From: /

Sent: 15 June 2020 11:37

To: Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>

Subject: Green Road and Silent Majority

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RE: The Green Road issue, Greencastle – Regeneration & Community Committee

Dear Madam,

I write further to my email of last Monday to thank the Council meeting of 9th June, for supporting the deferral of any further action by the Council regarding the Green Road issue, until a full and detailed report on it has been received.

As I explained previously, the so-called 'Green Road' no longer even exists. Only 7 of the 23 landowners involved who were contacted by the Council agree that it is a right of way. The Council's own report on the issue could find **no evidence of use** of the so-called right of way over our land – hardly surprising given it is blocked by fences and ditches and hasn't been used since the 1800s.

I read last week that a farmer in England has been successfully sued by a walker for over £1million after she was injured by livestock walking across his land.

Do I sue the Council or the Councillors who voted for it, if this happens to me?

Is it open season for ramblers in the Fermanagh Omagh Council area to use ratepayer money to fund multiple legal actions to forcibly adopt ancient abandoned rights of way, over farms in Fermanagh and Tyrone?

Has anyone asked the farming community of our Council area what they think about this?

For the Council to get itself ensnared in this type of litigation, at the behest of a small group of objectors to a planning application, is completely ridiculous and sets a very dangerous precedent.

I intend to write to the Council Chief Executive in the next fortnight to reinforce my arguments as to why the Council should drop the issue and terminate its use of ratepayer's money on it. I understand , may also write on behalf of the other landowners as well. This is a ludicrous waste of time and money for us all and it needs to stop.

In the meantime, I have been made aware that the '*Silent Majority*' group will be speaking to Councillors tonight setting out the views of a substantial number of people in our community who support the Dalradian mine project. As you probably know, there has been a campaign of bullying and intimidation by a small number of people in our area who want to prevent mining and who also want to silence others from supporting it.

I would ask you to please help ensure that the group is treated respectfully and allowed to explain why it is believed that the mine, and all the investment and jobs that will come with it, will be of great benefit to our area.

People have been bullied into silence until now, they will not be silenced anymore.

Yours faithfully

Re: Green Lane - Public Right-of-Way

Imelda McCarron <imelda.mccarron@fermanaghomagh.com>

Tue 16/6/20 9:24 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

 1 attachments (24 KB)

150620_Councils_Duties_Post_Assertion.docx;

Morning John

Apologies I am only sending this on - Cuilcagh has been consuming my time! Hope it's not too late. I've put a few summary points at the start but included greater detail from the guidance to the legislation in the body of text.

Thanks
Imelda

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 11 June 2020 11:18

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

Subject: Re: Green Lane - Public Right-of-Way

Imelda,

If you could pull anything together that would be a great start.

Thank you
John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

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

Sent: 11 June 2020 11:11 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

Subject: Re: Green Lane - Public Right-of-Way

Hi John

Thanks for this. If you need me to pull together anything on the future implications etc. let me know, I'm sure Philip & co will have it well covered anyway

Thanks
Imelda

From: John Boyle <john.boyle@fermanaghomagh.com>
Sent: 11 June 2020 10:56
To: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Subject: Re: Green Lane - Public Right-of-Way

Imelda,

The report to proceed with the process was not approved by the R&C Committee on Tuesday night. Members want more detail on the possible costs of litigation and future implications for the Council of designation of the route. Please continue to work with Estates in confirming landowners, but please hold off on contacting any landowners until further notice.

Thank you
John

John Boyle

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

Telephone: 0300 303 1777
Extension: 21002

From: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Sent: 09 June 2020 8:50 AM
To: John Boyle <john.boyle@fermanaghomagh.com>
Subject: Re: Green Lane - Public Right-of-Way

Morning John

Please see attached spreadsheet and map showing the breakdown of landowners. This work was carried out in 2016 when the PRow first came to the fore. I am still waiting on estates to come back to me with the current land folios.

Thanks
Imelda

From: John Boyle <john.boyle@fermanaghomagh.com>
Sent: 08 June 2020 17:45
To: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Subject: Re: Green Lane - Public Right-of-Way

Imelda,

Thank you for your work on this. Would it please be possible to get a copy of the spreadsheet on the landowners along the route. I don't need to know name but how many and numbers who agree, object, didn't know at that time. When was that analysis also carried out?

Thanks again
John

John Boyle

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

Telephone: 0300 303 1777
Extension: 21002

From: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Sent: 05 June 2020 3:04 PM
To: John Boyle <john.boyle@fermanaghomagh.com>
Subject: Re: Green Lane - Public Right-of-Way

Thanks for this John. I will start working with estates to confirm the landowners and come back to you as soon as possible.

Have a good weekend
Imelda

From: John Boyle <john.boyle@fermanaghomagh.com>
Sent: 05 June 2020 14:52
To: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Subject: Fw: Green Lane - Public Right-of-Way

Imelda,
I had a conversation with Philip this afternoon.



quickly as possible.

Thank you so much.
Have a good weekend
John

John Boyle
Director of Community, Health and Leisure
Fermanagh & Omagh District Council

Telephone: 0300 303 1777
Extension: 21002

FW: Call-In of Green Rd. Decision

Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>

Sat 08/08/2020 14:15

To: Creea McManus <creea.mcmanus@fermanaghomagh.com>

(e-mail 25, FOI Request)

From: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>

Sent: 16 June 2020 22:37

To: Bernice Swift (Councillor) <bernice.swift@fermanaghomagh.com>; Donal O'Cofaigh (Councillor) <donal.o'cofaigh@fermanaghomagh.com>; Eamon Keenan (Councillor) <eamon.keenan@fermanaghomagh.com>; Josephine Deehan (Councillor) <josephine.deehan@fermanaghomagh.com>; Stephen Donnelly (Councillor) <stephen.donnelly@fermanaghomagh.com>

Subject: Re: Call-In of Green Rd. Decision

Go raibh maith agaibh/Thanks all for your responses to my earlier e-mail.

Having thought this over I have decided to hold fire on the call-in decision, at least for now, as this issue still has to come back to the July full Council Meeting for ratification, so perhaps some of these issues can be addressed then.

Many thanks for your input this evening,.

Goodnight/Oíche mhaith,

Emmet

From: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>

Sent: Tuesday, 16 June 2020, 18:01

To: Bernice Swift (Councillor); Donal O'Cofaigh (Councillor); Eamon Keenan (Councillor); Josephine Deehan (Councillor); Stephen Donnelly (Councillor)

Subject: RE: Call-In of Green Rd. Decision

Proposed wording of Call-in, please see below:

We, the undersigned Fermanagh & Omagh District Councillors, submit a requisition to 'call-in' Agenda Item 7.9 (1.2.2 in relation to the Green Road Public Right of Way) from the Regeneration and Community Committee Meeting which took place on Tuesday 9th June, as we believe that the decision was not arrived at after a proper consideration of the relevant facts and issues (under Section 41 (1)(a)) and which was unduly influenced by an external e-mail which was not received by all elected Councillors.

Some of the reasons we are requesting the decision be called-in include, but are not exclusive to:

The decision taken by Fermanagh and Omagh District Council was to assert the Green Road as a Public Right of Way, and this decision was made in 2017, following contact from local residents in 2016 – what has delayed the process for three years that we are seemingly no further forward now – what were the issues with Junior Counsel mentioned in the agenda (2.1.2, p2 of the report); why was

the decision taken to suspend sending out the Letters of Claim at the start of the COVID crisis; who made this decision; why was Council not consulted;

What are the legal requirements expected of the Council since declaring that FODC will assert the Green Road as a Public Right of Way? What is the legal process, and how can this be progressed at a pace that would be more acceptable to local residents in Greencastle – taking 4-6 weeks to contact one or two dozen land owners to inform them that this letter is on its way seems an extortionate wait considering the length of time it has taken to get us to this point;

Is the Council eligible for potential legal costs, or does this charge fall to the landowner(s) objecting to the assertion of the Public Right of Way;

Why was the Council's Solicitor not present when this item was discussed, and can he be present should the call-in be accepted, as perhaps he could answer some of the questions listed and in need of an answer rather than delaying this process any further unnecessarily;

There is a note on p.3 of the report that 'at the end of this process the PRoW may or may not be established' – is this the case, or has FODC already, in fact, begun the process of asserting the Public Right of Way, which could only be stopped if a legal argument is upheld against it, and how likely is that to happen given the information, correspondence, etc. that the Council has received on this subject;

Finally we note that there are no negative Equality & Good Relations or Rural Proofing Implications if we proceed to the next step of asserting the PRoW, and it is noted that this "initiative supports the social pillar of sustainable development" (p.4).

Thank you,

Cllr. Emmet McAleer

From: Emmet McAleer (Councillor)

Sent: 16 June 2020 17:33

To: Bernice Swift (Councillor) <Bernice.Swift@fermanaghomagh.com>; Donal O'Cofaigh (Councillor) <donal.o'cofaigh@fermanaghomagh.com>; Eamon Keenan (Councillor) <eamon.keenan@fermanaghomagh.com>; Josephine Deehan (Councillor) <Josephine.Deehan@fermanaghomagh.com>; Stephen Donnelly (Councillor) <stephen.donnelly@fermanaghomagh.com>

Subject: Call-In of Green Rd. Decision

Dear all,

I was thinking over requesting a call-in of the decision taken in relation to the Green Road Public Right of Way (Item 7.9 on the 9th June Regeneration & Community Committee Meeting, Item 1.2.2).

As you know, to action this, six councillors are required to action a call-in.

As the Independent/single party representatives on the Council I was wondering if you would be supportive, and willing to sign the call-in request?

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If you could send me a reply (individually if you prefer), just to let me know it would be much appreciated as the call has to be submitted urgently to be accepted.

Many thanks, and see you all at 7pm.

Emmet

FW: Call-In of Green Rd. Decision

Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>

Sat 08/08/2020 14:14

To: Creea McManus <creea.mcmanus@fermanaghomagh.com>

(e-mail 21, FOI Request)

From: Stephen Donnelly (Councillor) <stephen.donnelly@fermanaghomagh.com>

Sent: 16 June 2020 18:34

To: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>

Subject: Re: Call-In of Green Rd. Decision

Hi Emmet,

Happy to lend my support.

Stephen.

From: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>

Sent: 16 June 2020 18:01

To: Bernice Swift (Councillor) <bernice.swift@fermanaghomagh.com>; Donal O'Cofaigh (Councillor)

<donal.o'cofaigh@fermanaghomagh.com>; Eamon Keenan (Councillor)

<eamon.keenan@fermanaghomagh.com>; Josephine Deehan (Councillor)

<josephine.deehan@fermanaghomagh.com>; Stephen Donnelly (Councillor)

<stephen.donnelly@fermanaghomagh.com>

Subject: RE: Call-In of Green Rd. Decision

Proposed wording of Call-in, please see below:

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Thank you,

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From: Emmet McAleer (Councillor)

Sent: 16 June 2020 17:33

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If you could send me a reply (individually if you prefer), just to let me know it would be much appreciated as the call has to be submitted urgently to be accepted.

Many thanks, and see you all at 7pm.

Emmet

Re: Green Lane - Public Right-of-Way

Imelda McCarron <imelda.mccarron@fermanaghomagh.com>

Tue 16/06/2020 09:24

To: John Boyle <john.boyle@fermanaghomagh.com>

📎 1 attachments (24 KB)

150620_Councils_Duties_Post_Assertion.docx;

Morning John

Apologies I am only sending this on - Cuilcagh has been consuming my time! Hope it's not too late. I've put a few summary points at the start but included greater detail from the guidance to the legislation in the body of text.

Thanks
Imelda

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 11 June 2020 11:18

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

Subject: Re: Green Lane - Public Right-of-Way

Imelda,

If you could pull anything together that would be a great start.

Thank you
John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

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

Sent: 11 June 2020 11:11 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

Subject: Re: Green Lane - Public Right-of-Way

Hi John

Thanks for this. If you need me to pull together anything on the future implications etc. let me know, I'm sure Philip & co will have it well covered anyway

Thanks
Imelda

From: John Boyle <john.boyle@fermanaghomagh.com>
Sent: 11 June 2020 10:56
To: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Subject: Re: Green Lane - Public Right-of-Way

Imelda,

The report to proceed with the process was not approved by the R&C Committee on Tuesday night. Members want more detail on the possible costs of litigation and future implications for the Council of designation of the route. Please continue to work with Estates in confirming landowners, but please hold off on contacting any landowners until further notice.

Thank you
John

John Boyle

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

Telephone: 0300 303 1777
Extension: 21002

From: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Sent: 09 June 2020 8:50 AM
To: John Boyle <john.boyle@fermanaghomagh.com>
Subject: Re: Green Lane - Public Right-of-Way

Morning John

Please see attached spreadsheet and map showing the breakdown of landowners. This work was carried out in 2016 when the PRoW first came to the fore. I am still waiting on estates to come back to me with the current land folios.

Thanks
Imelda

From: John Boyle <john.boyle@fermanaghomagh.com>
Sent: 08 June 2020 17:45
To: Imelda McCarron <imelda.mccarron@fermanaghomagh.com>
Subject: Re: Green Lane - Public Right-of-Way

Imelda,

Thank you for your work on this. Would it please be possible to get a copy of the spreadsheet on the landowners along the route. I don't need to know name but how many and numbers who agree, object, didn't know at that time. When was that analysis also carried out?

Thanks again
John

John Boyle

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

Summary Points

- The Council has a duty to:
 - Assert, protect and keep open and free from obstruction any public right of way
 - Compile and preserve maps of the rights of way in its area
 - Signpost paths, where necessary, to help anyone who does not know the area
 - Contribute at least a quarter of the cost of maintaining stiles and gates
- Aside from that, should the Council so decide to, it also has the powers to:
 - Maintain any public right of way
 - Authorise the erection of new stiles and gates
- The onus does not fall on the Council to maintain the PRoW but if the Council does decide to maintain the PRoW through its leisure provision, the Council will then become responsible for the Public Liability of the route. If not, the landowner will be responsible for liability.
- The standard to which a PRoW needs to be maintained is minimal, particularly in rural areas – only enough so that those who are reasonably fit in light active gear can easily pass. However, if the Council does agree to take on responsibility of maintenance there are wider obligations about visitor safety and so this standard may not be acceptable.
- Regardless if the Council agrees to maintain or not, the Council has a duty to ensure the landowner doesn't intentionally block the PRoW. If he/she does, the Council must remove the obstruction. It should agree works with the landowner but if agreement can't be met, then legal advice may need to be sought. (If this is a building Council may not have the power to remove and again, legal advice will need to be sought)

Council's duties for asserted Public Rights of Way

According to the Guide to Public Rights of Way and Access to the Countryside guidance produced by the Government, the Key Provisions of the Access to the Countryside (NI) Order, 1983 for Councils is as follows:

The Council has a duty to:

- Assert, protect and keep open and free from obstruction any public right of way
- Compile and preserve maps of the rights of way in its area
- Signpost paths, where necessary, to help anyone who does not know the area
- Contribute at least a quarter of the cost of maintaining stiles and gates

Aside from that, should the Council so decide to, it also has the powers to:

- Maintain any public right of way
- Authorise the erection of new stiles and gates

The Landowner's and occupiers' duties and rights are as follows:

A duty to:

- Maintain stiles and gates so they are convenient and safe to use

A right to:

- Put up, with the Council's permission, additional stiles and gates where they are needed to restrict animals
- Claim back a quarter of the repairs to existing stiles and gates

Liability Issues

The long-standing principle has been – and remains – that an occupier has no responsibility towards users for the condition or safety of the path. A user would need to prove that the owner was guilty of misfeasance (i.e.. doing something that then caused injury or damage, such as a negligent repair) as distinct from simply nonfeasance (i.e.. failing to do anything to maintain the way).

Where the council exercises its powers to maintain a public right of way it similarly may become liable for misfeasance (although this would normally be covered by its public liability insurance).

Following two different Public Liability cases in NI the Law Reform Advisory Committee for Northern Ireland set out in a discussion paper published in April 1993, were that there is a distinction between urban and rural rights of way and that "It should be obvious to users of rural rights of way that the

paths have not been made up and that they therefore cannot reasonably expect that degree of maintenance that would be appropriate for a properly constructed urban road or footpath dedicated to public use”.

Apart from the landowner’s specific duty under Article 5 of the Access Order to ensure that any existing gates and stiles are safe to use (and to comply with any conditions attached to a consent under Article 6 to put up additional ones) a claim against the occupier would succeed only if the plaintiff could prove misfeasance. In simple terms, this means that the occupier must not deliberately set out to injure a path user, nor do anything that is blatantly negligent (such as leaving an open excavation on the line of a path) or which obviously presents a hazard (such as putting up an obstruction which could lead to injury).

If Council did agree to maintain gates and stiles etc, it would be essential that the Council ensure that all gates and stiles were up to standard and safely inspected etc. so that should a claim arise, the Council is not negligent. The landowner would also need to be made aware that should the Council agree to maintain the gates and stiles, the onus is on the landowner to ensure there is no misfeasance for the other sections of the PRoW or they may be held accountable should a claim arise.

It is worth noting that when the legislation refers to “maintain”, the word maintain has been judicially interpreted as meaning “to put a highway in such repair as to be reasonably passable to the ordinary traffic of the neighbourhood” and “to restore to a sound or unimpaired condition” any highway or bridge “which has become unsound or impaired through neglect or use”. Under this power the council would, for example, be able to repair the surface of a path and remove scrub and overgrowth from the surface. The power does not extend to dealing with man-made obstructions, however, such as by removing a barbed wire fence. Nor does it allow the council to make improvements to the path, other than those which are incidental to any maintenance, without prior consent from the landowner.

Where the owner or occupier fails to comply with his or her duty under Article 5 (to maintain existing stiles and gates, etc) or Article 7 (not to plough a headland path and to restore ploughed cross-field paths) the council may, after giving 14 days’ notice, “take all necessary steps” to rectify the deficiency and recover its costs. Such action must be limited to that which is reasonable to remedy the owner’s deficiency.

The requirement to protect and maintain Public Rights of Way

It is less clear where the duty to maintain any public rights of way might lie. What is certain is that the duty does not rest with the owner or occupier of the land. This long-standing principle has repeatedly been reaffirmed by the courts, including in a number of recent cases. The owner may, of course, keep the path in good repair for his or her own use or may choose to repair the surface so it is easier for others to use. But he or she has no obligation, as such, to keep a path in a suitable condition for the public to use.

It is unclear where the responsibility for repairing public rights of way in Northern Ireland might lie. If the path is one that has existed for many centuries, then it is conceivably possible - although unlikely - that responsibility might be found to lie with the district council. But it is much more likely

that the courts would find that a right of way is repairable by no-one, and the public must accept the path in whatever condition they find it.

The council does, however, now have discretionary powers under Article 3 of the Access Order to maintain any public right of way if it chooses to do so. With the growing importance of public rights of way for recreation, and the benefits rights of way can bring, the Department would urge every council to be willing to use this power to ensure the paths in its area are in good condition and are easy and enjoyable to use.

Dealing with obstructions and encroachment

District councils have a duty to protect and keep open and free from obstruction any public right of way - Article 3 (1). Councils may also, after consultation with the owner of the land concerned, maintain any public right of way.

The term keep open and free from obstruction is not defined but traditionally this was taken as the duty to undertake such work as necessary to enable passage along the route by a reasonably active person, wearing appropriate walking clothes.

Vegetation such as fallen trees, dense brambles or nettles may be considered as obstructions; as would any barrier erected across the route which does not permit easy passage.

Minor flooding, long grass or uneven surfaces may not be considered as obstructions.

Councils may also, after consultation with the owner of the land concerned, maintain any public right of way. This can be taken to involve minor works other than that required to keep a path open and free from obstruction.

In Northern Ireland, there is no clear duty placed on anyone to maintain public rights of way but, if district councils assume responsibility as part of their leisure function, a general approach might be based upon the following:

The extent of maintenance is that required to keep the route reasonably passable, at all seasons of the year, for the ordinary traffic of the neighbourhood, of all classes entitled to use the way (e.g. walkers, horses, etc)

Path maintenance should be in keeping with the likely level of usage. For example, a route leading to a church or graveyard might be expected to be maintained to a higher level than a seldom-used remote path in the countryside.

The council should endeavour to act quickly to deal with any obstruction or encroachment of a right of way that is reported to it, or which it finds from its own inspections.

Sometimes, public rights of way can be damaged by the legitimate use of farm tractors (often by the landowner only); other than by persuasion, Councils have no power to prevent this. In extreme cases, EHS can consider grant aid for upgrading such routes to provide a surfaced road suitable for all users.

If the path is one that is being restored to good condition after a period of neglect, the removal of any obstructions will normally be part of a comprehensive programme of work drawn up and agreed with the owners and occupiers concerned. In these circumstances it will clearly be sensible to deal with all natural vegetation at the same time, whether growing from the surface of the path or overhanging from the sides. The division of responsibility suggested above should therefore be applied liberally and the council should be willing (with the owners agreement) to undertake all of the clearance that is required. Alternatively, the owner might agree to do so, with a small financial contribution from the council to cover clearance of the path surface.

It should be noted that council's powers to restore a ploughed path (see section 5.4.2) do not extend to dealing with any crops that are growing on the line of a right of way. They must therefore be dealt with as an obstruction.

Green Road

Philip Kingston <Philip.Kingston@derrystrabane.com>

Mon 15/06/2020 17:47

To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

📎 1 attachments (15 KB)

FERMANAGH OMAGH R of W.docx;

CAUTION: This message originates from outside our organisation. Consider carefully whether you should click on any links, open any attachments or reply. If in doubt, forward to helpdesk@fermanaghomagh.com

Alison,

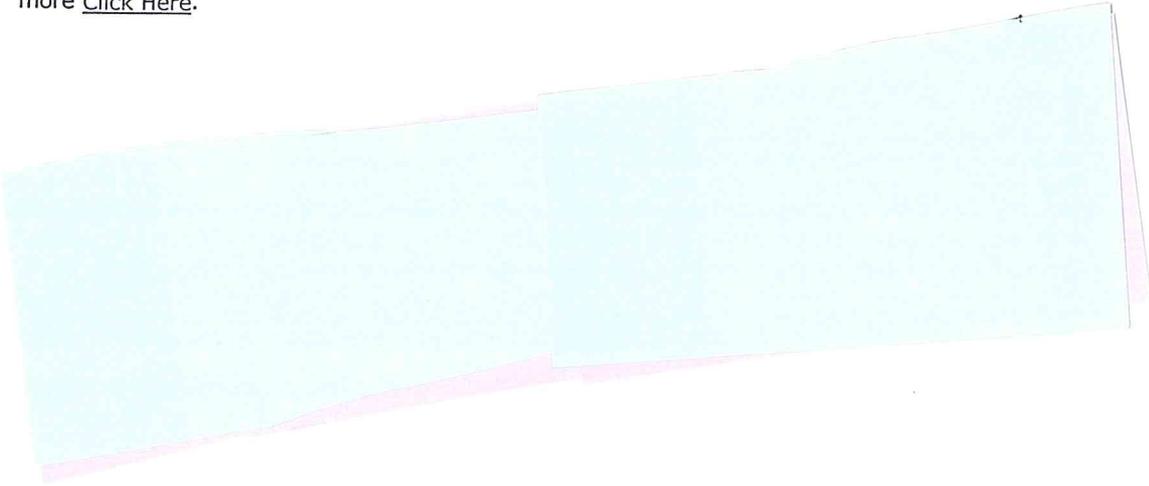
Thought you might appreciate sight of [redacted] brief opinion on this matter. I'm sure you've seen it before but it is a useful refresher on where things stand legally if you are going to get a number of questions about this from elected members.

Philip.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

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FW: Call-In of Green Rd. Decision

Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>

Sat 08/08/2020 14:15

To: Creaa McManus <creea.mcmanus@fermanaghomagh.com>
(e-mail 24, FOI Request)

From: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>
Sent: 16 June 2020 22:32
To: Josephine Deehan (Councillor) <josephine.deehan@fermanaghomagh.com>
Subject: Re: Call-In of Green Rd. Decision

Thanks Josephine,

Going to wait now to address it in the full Council meeting, might have pre-empted or jumped the gun with the call-in request!

Goodnight,

Emmet

Get [Outlook for Android](#)

From: Josephine Deehan (Councillor) <josephine.deehan@fermanaghomagh.com>
Sent: Tuesday, June 16, 2020 6:55:08 PM
To: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>
Subject: Re: Call-In of Green Rd. Decision

Emmet, these are all very good and valid points that you make. The proposal is to bring back more info to the Committee which I think is reasonable given the assertions in the e-mail. We are not abandoning the right to assert RoW.
Regards Josephine

From: Bernice Swift (Councillor) <bernice.swift@fermanaghomagh.com>
Sent: 16 June 2020 18:43
To: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>; Donal O'Cofaigh (Councillor) <donal.o'cofaigh@fermanaghomagh.com>; Eamon Keenan (Councillor) <eamon.keenan@fermanaghomagh.com>; Josephine Deehan (Councillor) <josephine.deehan@fermanaghomagh.com>; Stephen Donnelly (Councillor) <stephen.donnelly@fermanaghomagh.com>
Subject: Re: Call-In of Green Rd. Decision

Hello All

Humble Apologies only back online and in signal now.

Yes, I'm content with all below surely.

Sincerely
Bernice

From: Emmet McAleer (Councillor) <emmet.mcaleer@fermanaghomagh.com>
Sent: 16 June 2020 18:01
To: Bernice Swift (Councillor) <bernice.swift@fermanaghomagh.com>; Donal O'Cofaigh (Councillor)

<donal.o'cofaigh@fermanaghomagh.com>; Eamon Keenan (Councillor)
<eamon.keenan@fermanaghomagh.com>; Josephine Deehan (Councillor)
<josephine.deehan@fermanaghomagh.com>; Stephen Donnelly (Councillor)
<stephen.donnelly@fermanaghomagh.com>

Subject: RE: Call-In of Green Rd. Decision

Proposed wording of Call-in, please see below:

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Thank you,

Cllr. Emmet McAleer

From: Emmet McAleer (Councillor)

Sent: 16 June 2020 17:33

To: Bernice Swift (Councillor) <Bernice.Swift@fermanaghomagh.com>; Donal O'Cofaigh (Councillor) <donal.o'cofaigh@fermanaghomagh.com>; Eamon Keenan (Councillor)

<eamon.keenan@fermanaghomagh.com>; Josephine Deehan (Councillor)
<Josephine.Deehan@fermanaghomagh.com>; Stephen Donnelly (Councillor)
<stephen.donnelly@fermanaghomagh.com>

Subject: Call-In of Green Rd. Decision

Dear all,

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As you know, to action this, six councillors are required to action a call-in.

As the Independent/single party representatives on the Council I was wondering if you would be supportive, and willing to sign the call-in request?

As the Parties combined to stall this motion further I don't expect that any of them will split ranks, so if you are not all supportive this call cannot be progressed.

If you could send me a reply (individually if you prefer), just to let me know it would be much appreciated as the call has to be submitted urgently to be accepted.

Many thanks, and see you all at 7pm.

Emmet

Fwd: Green Road and Silent Majority

Thu 25/06/2020 12:49

To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

CAUTION: This message originates from outside our organisation. Consider carefully whether you should click on any links, open any attachments or reply. If in doubt, forward to helpdesk@fermanaghomagh.com

Dear

many thanks for your message below. My apologies firstly, I had not got around to checking my e-mails recently and have only been able to catch up today.

I would also like to thank you, your staff, and the Council Chair, for taking my comments on board regarding the treatment of the Silent Majority representatives during their recent presentation. It was, I believe, held in an environment primarily of respect and courtesy, for which I commend you all.

Regarding your request about sharing my e-mail to all Members: I gave a lot of time and consideration to deciding on the initial list of recipients, something I am sure you will appreciate given the behaviour of some people at previous Council meetings.

The list of recipients is exactly that, a list of people who I wished to receive my letter, a correspondence directed to what I considered to be the appropriate Members, and it is to them and them only that I would address it. I would therefore politely ask that it is not shared outside of this Group, and that this response is kept confidential amongst ourselves.

May I also take the opportunity to wish you continued success in your post as Chief Executive of the Council.

Yours sincerely,

----- Forwarded message -----

From: **Alison McCullagh** <alison.mccullagh@fermanaghomagh.com>

Date: Mon, 15 Jun 2020 at 11:56

Subject: Re: Green Road and Silent Majority

To: /

Dear

Thank you for your email. The Council Chair will be chairing this evening's informal meeting and I will advise him of your comments and concerns.

At the Regeneration and Community Committee, some Councillors referenced receipt of correspondence from you, and I just wanted to check if your letter was sent to all Members? If not, have you any objection in me sharing the original letter you sent to me, if I am asked to do so?

Regards,

Alison McCullagh

Chief Executive
Fermanagh and Omagh District Council

From:

Sent: 15 June 2020 11:40

To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Subject: Green Road and Silent Majority

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RE: The Green Road issue, Greencastle – Regeneration & Community Committee

Dear Madam,

I write further to my email of last Monday to thank the Council meeting of 9th June, for supporting the deferral of any further action by the Council regarding the Green Road issue, until a full and detailed report on it has been received.

As I explained previously, the so-called 'Green Road' no longer even exists. Only 7 of the 23 landowners involved who were contacted by the Council agree that it is a right of way. The Council's own report on the issue could find **no evidence of use** of the so-called right of way over our land – hardly surprising given it is blocked by fences and ditches and hasn't been used since the 1800s.

I read last week that a farmer in England has been successfully sued by a walker for over £1million after she was injured by livestock walking across his land.

Do I sue the Council or the Councillors who voted for it, if this happens to me?

Is it open season for ramblers in the Fermanagh Omagh Council area to use ratepayer money to fund multiple legal actions to forcibly adopt ancient abandoned rights of way, over farms in Fermanagh and Tyrone?

Has anyone asked the farming community of our Council area what they think about this?

For the Council to get itself ensnared in this type of litigation, at the behest of a small group of objectors to a planning application, is in my view completely ridiculous and sets a very dangerous precedent.

I intend to write to you in the next fortnight to reinforce my arguments as to why the Council should drop the issue and terminate its use of ratepayer's money on it. I understand Doris McMahon Solicitors may also write on behalf of the other landowners as well. This is a ludicrous waste of time and money for us all and it needs to stop.

In the meantime, I have been made aware that the '*Silent Majority*' group will be speaking to Councillors tonight setting out the views of a substantial number of people in our community who support the Dalradian mine project. As you probably know, there has been a campaign of bullying and intimidation by a small number of people in our area who want to prevent mining and who also want to silence others from supporting it.

I would ask you to please help ensure that the group is treated respectfully and allowed to explain why it is believed that the mine, and all the investment and jobs that will come with it, will be of great benefit to our area.

People have been bullied into silence until now, they will not be silenced anymore.

Yours faithfully

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Re: Greencastle Green Road PROW

Sat 20/6/20 7:05 PM

To: Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>

Cc: John Boyle <john.boyle@fermanaghomagh.com>

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Kim

Thanks very much for the prompt reply, apologies if I addressed my query to the wrong person!!

I look forward to hearing from John.

Regards

On Sat, 20 Jun 2020, 16:06 Kim McLaughlin, <kim.mclaughlin@fermanaghomagh.com> wrote:

Hi

Thank you for your email. This matter is being dealt with by my colleague, John Boyle who is now Director of Community, Health and Leisure and I have forwarded your email to John.

Kim

Kim McLaughlin
Director of Regeneration and Planning
Tel: 0300 303 1777
Email: kim.mclaughlin@fermanaghomagh.com

From:

Sent: 19 June 2020 20:44

To: Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>

Subject: Greencastle Green Road PROW

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Kim

I understand that you have taken over the portfolio within Fermanagh and Omagh Council which is dealing with the Greencastle to Rouskey Green Road PROW investigation. Good luck and best wishes in your new role.

My name is ' _____ and I have met with, spoken to by phone and had a number of meetings (both in my home and within the Council offices) around the Greencastle Green Road PROW with your predecessor Robert Gibson. My last official meeting with Robert was on Wednesday 6th November 2019 in The Grange offices in Omagh at 2pm and maintained contact via email up until Robert's retirement in March 2020.

If possible, I would like to speak to you around the continued protracted nature of the process which appears to be delaying the assertion of the PROW from continuing to the County Court. Could you please give me a call on 079 77 901103 ?

Perhaps you can help me to understand why Councillors have decided that this subject requires further reports and further cost analysis when the Assertion was proposed and seconded by Councillors in November 2018 with no counter proposals made when Mr. Gibson put the motion before Council, Robert had hoped that a Court date would be achieved before March 2019 ?

We appear to have went backwards from that point with no reason or reasonable explanation offered, I listened to debate online with some interest and found it very interesting that Councillors main concern was what they believe to be the spiralling possible legal costs when the Council appear to be spending a fortune keeping the issue from proceeding to Court!! As I understand, two or perhaps three separate legal Counsel opinions have been sought which I assume have arrived at the same conclusion which would be that the Fermanagh and Omagh Council have a Statutory Duty to assert the Right of Way.

Your assistance in helping me understand the current situation would be most helpful. Thanks in advance.

Regards

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Thanks for the call.

Mon 22/6/20 10:35 PM

To: John Boyle <john.boyle@fermanaghomagh.com>

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John

Thanks for taking the time and courtesy to call today. I appreciated your straight forward approach and explanation of where you see the process at present.

I will stay in touch.

Regards

Sent from Mail for Windows 10

Green Road PRow

John Boyle <john.boyle@fermanaghomagh.com>

Wed 01/07/2020 12:16

To: Creaa McManus <creea.mcmanus@fermanaghomagh.com>

 1 attachments (74 KB)

200708-Draft Green Road PRow.docx;

Creaa,

Please find attached draft report on the Green Road PRow. Can I please ask you to put it into some sort of shape - adjust at will to make sense.

Thank you

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002



Fermanagh & Omagh
District Council

Comhairle Ceantair
Fhear Manach agus na hÓmaí

Report to:	Regeneration and Community Committee	Agenda Item: X
Report Title:	Green Road Public Right of Way	(Paper X)
Date:	8 July 2020	
Report by:	Director of Community, Health and Leisure	
For Publication:	Yes	
	If 'not for publication', Insert reference to grounds upon which information is deemed 'confidential' [ref Local Government (Northern Ireland) Act 2014 section 42(2), (3)] or 'exempt' [ref Local Government (Northern Ireland) Act 2014 section 42(4) Schedule 6]:	
(i) Confidential grounds:	N/A	
(ii) Exempt grounds:	N/A	

1. Relevant Background and Introduction

- 1.1 The purpose of the report is to provide Members with an update on the estimated costs associated with any potential County Court proceedings in asserting the Green Road as a Public Right of Way (PRoW), and to note the future process of assertion.

- 1.2 A recommendation to proceed with the assertion process was deferred at the June Regeneration and Community Committee meeting pending consideration of a report on the costs associated with any potential County Court proceedings and the future protection of the Green Road PRoW.

2. Key Issues

- 2.1 Potential costs associated with assertion of the Green Road as a PRoW

2.1.1 In order to assert the Green Road as a PRoW all landowners directly affected must agree to the assertion. If there are landowners who are not content with the decision the Council will be required to issue court proceedings to the County Court against each defendant, on an individual basis. Following a County Court ruling should either party wish to appeal the decision this appeal would be heard in the High Court.

2.1.2 Costs associated with the court case will be on the equity scale. County Court costs should be capped at approximately £4,000 per party to the proceedings (per defendant) for the first day, and £1,200 per defendant for every day thereafter. Further legal costs are estimated at £5,000 for proceedings lasting for one day, and £3,000 for each subsequent day.

2.1.3 If five landowners did not consent to the route being asserted as a PROW the costs in the County Court, for a process lasting 2 days, would therefore be £34,000 (£20,000 court costs for the first day, £6,000 court costs for the second day, £5,000 legal costs for the first day and £3,000 legal costs for the second day).

2.1.4 If an appeal were to take place to the High Court, following the County Court proceedings, costs would be in the same magnitude as those experienced in the County Court.

2.2 Responsibilities of Council in relation to PROW

2.2.1 The Council has a duty to:

- Assert, protect and keep open and free from obstruction any PROW
- Compile and preserve maps of the rights of way in its area
- Signpost paths, where necessary, to help anyone who does not know the area
- Contribute at least a quarter of the cost of maintaining stiles and gates

Aside from that, should the Council so decide to, it also has the powers to:

- Maintain any PROW
- Authorise the erection of new stiles and gates

2.2.2 The onus does not fall on the Council to maintain the PROW but if the Council does decide to maintain the PROW, the Council will then become responsible for the Public Liability of the route. If not, the landowner will be responsible for liability.

2.2.3 The standard to which a PROW needs to be maintained is minimal, particularly in rural areas – only enough so that those who are reasonably fit in light active gear can easily pass. However, if the Council does agree to take on responsibility of maintenance there are wider obligations about visitor safety and so this standard may not be acceptable.

2.2.4 Regardless if the Council agrees to maintain or not, the Council has a duty to ensure the landowner doesn't intentionally block the PROW. If he/she does, the Council must remove the obstruction. It should agree works with the landowner but if agreement can't be met, then legal advice may need to be sought.

2.3 The next steps in the asserting the Green Road as a PRow were outlined in the Regeneration and Community Committee report in June 2020. These included:

- Review the list of landowners to establish that no details have changed since the Council were last in contact;
- Personally contact each landowner to inform them that the Letter of Claim for assertion of the Green Road as a PRow is on its way. In this way landowners will not be surprised by inclusion in the letter of the prospect of being taken to Court. This process could be completed in a number of weeks;
- Issue Letter of Claim to landowners and allow a period of up to 4 weeks for return.
- For those who do not agree with the proposed assertion of the Green Road as a PRow issue court proceedings to the County Court;
- Await the cases to be heard in the County Court - this could take a period of 6-12 months from the date of lodgement.

3. Resource Implications

3.1 Financial

Potential estimated financial costs of litigation are as follows

	Court Costs	Legal Costs
First day of proceedings	£4,000 per defendant	£5,000
Second and subsequent days of proceedings	£1,200 per defendant	£3,000

If the Council agrees to maintain the Green Road PRow the annual cost is estimated between £1,500 and £2,000 per annum.

3.2 Human Resources

Officer time will be required in asserting the route as a PRow, included in normal budgets

3.3 Assets and Other Implications

The Council may decide to maintain the PRow in the future.

4. Equality and Good Relations Implications

4.1 Equality

There are no negative Equality implications.

4.2 Good Relations

There are no negative Good Relations implications.

5. Sustainable Development Implications

This initiative supports the social pillar of sustainable development.

6. Rural Proofing Implications

There are no negative rural proofing implications.

7. District Electoral Areas Affected

Mid Tyrone

8. Recommendation

It is recommended that Fermanagh and Omagh District Council:

- i. notes the potential estimated costs of asserting the Green Road as a PRoW;
- ii. notes the responsibility of the Council in maintaining the PRoW;
- and
- iii. notes the future steps necessary in asserting the Green Road as a PRoW;

9. Appendices and Attachments

N/A

10. Background Documents

N/A

Key to Abbreviations:

PRoW Public Right of Way

Philip Kingston <Philip.Kingston@derrystrabane.com>

Tue 7/7/20 12:53 PM

To: John Boyle <john.boyle@fermanaghomagh.com>

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John,

I'm on leave tomorrow but I'm not going anywhere so happy to dial in.

PK.

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 07 July 2020 12:40

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

Subject: [SUSPICIOUS MESSAGE] :

This Message contains suspicious characteristics and has originated outside your organization.

Philip,

Can I ask if you would be available to attend the R&C Committee meeting tomorrow afternoon (4pm - 7pm)? I would think that there may be some legal questions regarding the Green Road.

Please let me know if it suits - apologies I don't want to be tying you up.

Many thanks

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 02 July 2020 11:09 AM

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

Subject: F

Philip,

In light of the correspondence would you feel I need to change the draft report to Committee to include costs of successful litigants should we lose (not keen on this one) and the costs of witnesses - which I don't think we have factored in.

Not sure if I understand Point 3 on compensation which will result on successful assertion.

Many Thanks

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Sent: 02 July 2020 10:46 AM

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

Cc: John Boyle <john.boyle@fermanaghomagh.com>

Subject:

Good Morning Philip,

Please see attached which I have acknowledged; could you please review and indicate how we should proceed in terms of reporting (no particular issue re this) and the associated queries? I assume we can take this as official notification to oppose the assertion?

thanks,

Alison

From: K

Sent: 02 July 2020 10:24

To: Tommy Maguire (Councillor) <tommy.maguire@fermanaghomagh.com>

Cc: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>; Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>

Subject:

N

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Dear Sirs

Please find attached letter.

Yours faithfully,

Philip Kingston <Philip.Kingston@derrystrabane.com>

Thu 2/7/20 11:51 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

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Regards,
Philip.

From: John Boyle [mailto:john.boyle@fermanaghomagh.com]

Sent: 02 July 2020 11:09

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

Subject: :

This Message contains suspicious characteristics and has originated outside your organization.

Philip,

In light of the correspondence would you feel I need to change the draft report to Committee to include costs of successful litigants should we lose (not keen on this one) and the costs of witnesses - which I don't think we have factored in.

Not sure if I understand Point 3 on compensation which will result on successful assertion.

Many Thanks
John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Sent: 02 July 2020 10:46 AM

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

Cc: John Boyle <john.boyle@fermanaghomagh.com>

Good Morning Philip,

Please see attached which I have acknowledged; could you please review and indicate how we should proceed in terms of reporting (no particular issue re this) and the associated queries? I assume we can take this as official notification to oppose the assertion?

thanks,

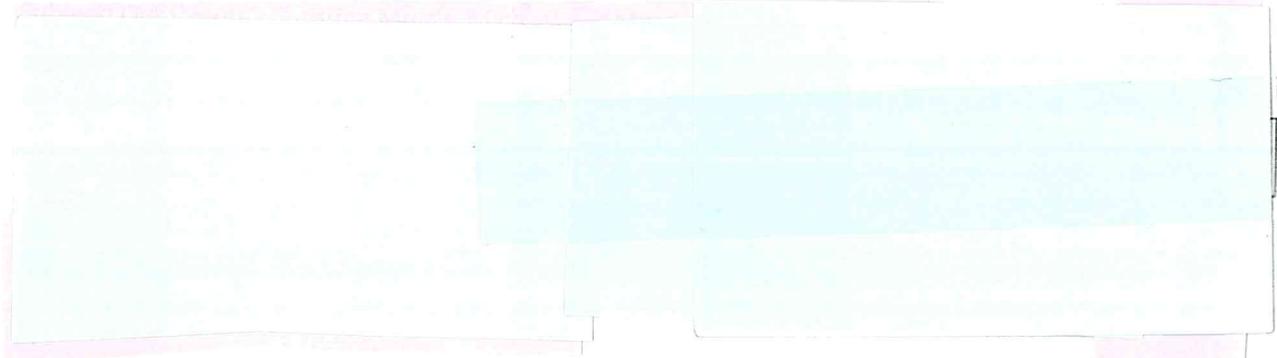
Alison

From:

Sent: 02 July 2020 10:24

To: Tommy Maguire (Councillor) <tommy.maguire@fermanaghomagh.com>

Cc: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>; Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>



Dear Sirs

Please find attached letter.

Yours faithfully,



Re: Green Road

Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Thu 09/07/2020 15:23

To: <com>

Thanks

Sorry I was on leave yesterday, but I heard some of the debate.

I think we have all the details we need, but might well come back to you on this,

Kind regards,

Alison

From: :

Sent: 08 July 2020 15:27

To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Subject: Green Road

Alison I have declared a interest in this issue because one of the objectors is related to me.You are probably aware of who I am referring to.I could give information to the council officers dealing with this case if appropriate.

Sent from Mail for Windows 10

RE: (

n>

Thu 09/07/2020 14:42

To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

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Ms McCullagh

Many thanks for your swift response. Much appreciated.

Regards

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Sent: 09 July 2020 14:38

To:

Subject:

Dear

I was not at the meeting, but my understanding is consideration of the matter had not concluded before the meeting ended. As such, it will be considered at the next Regeneration and Community Committee.

My understanding is a full Webex recording is being uploaded as there seems to have been some difficulty with Youtube, so you should be able to hear the debate.

Regards,

Alison McCullagh

Chief Executive

Fermanagh and Omagh District Council

From: _____ <_____@_____com>

Sent: 09 July 2020 14:33

To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Subject:

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Good afternoon Ms McCullagh

Many thanks

Regards

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Sent: 02 July 2020 10:45
To: _____ >; Tommy Maguire (Councillor) <tommy.maguire@fermanaghomagh.com>
Cc: Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>
Subject:

Dear

I wish to confirm receipt of your correspondence and to advise that it has been forwarded to our legal representatives for their review and attention.

Regards,

Alison McCullagh

Chief Executive
Fermanagh and Omagh District Council

From: >
Sent: 02 July 2020 10:24
To: Tommy Maguire (Councillor) <tommy.maguire@fermanaghomagh.com>
Cc: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>; Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>
Subject:

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Dear Sirs

Please find attached letter.

Yours faithfully,

Our Ref:

Your Ref:

Date:

2nd July 2020

Mr Tommy Maguire
Chair of Regeneration and Community Committee
Fermanagh & Omagh District Council
The Grange
Mountjoy Road
Omagh
County Tyrone
BT79 7BL

FIRST CLASS POST AND EMAIL

Dear Sir

Re: Lands at Greencastle and Ruskey, County Tyrone
Our Clients –

We refer to the debate which took place at the Regeneration and Community Committee on 9 June 2020 in respect of the alleged public right of way over land described as the "Green Road", near Greencastle.

As previously advised, we act for the above-named clients, all of whom object to Fermanagh and Omagh District Council's (FODC) proposed assertion of this so-called right of way and whose intention it is to resist any such assertion, which has been clearly documented. The reference at paragraph 3.1.2 of the written report to the Regeneration and Community Committee on 9 June to "potential costs" of issuance of proceedings in the County Court is, in our view, misleading as Council officers had clear notice that, should the Council proceed with the proposed assertion, costs of proceedings are inevitable and not merely potential.

Indeed, the strength of opposition on the part of our clients and also on the part of other land owners is such that the costs of proceedings could be many hundreds of thousands of pounds. In this current climate of financial uncertainty and pressure on public finances, we welcome the decision by the Committee to have the matter reconsidered to determine whether the Council should get involved in this at all.

We now wish to set out a number of factors which we believe should be taken into consideration:

1. Potential liabilities from costs arising

For the sake of clarity and full transparency around potential liabilities arising, any report to your Committee on this 'Green Road' subject should advise the Council around:

Our clients wish to make it clear that they have no wish to become embroiled in a legal dispute with FODC. However, they are equally clear in their determination to protect their rights with regards to their own private lands. We would therefore appeal to you and your Council colleagues to reflect on this now and discontinue the Council's involvement in the 'Green Road' issue.

We would appreciate it if you would acknowledge receipt of this letter and confirm that a copy of it will be provided to all your Committee members, as well your Council Officers.

Yours faithfully,

CC. Kim McLaughlin, Director of Regeneration and Planning
Alison McCullagh, Chief Executive

Fw: Green Road photos

Ian Davidson <ian.davidson@fermanaghomagh.com>

Fri 10/7/20 8:02 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

FOR INFORMATION

John

File link below for images of Green Road. I would say it's a long time since anyone cycled this....

Regards

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

Sent: 10 July 2020 07:53

To: Ian Davidson <ian.davidson@fermanaghomagh.com>

Subject: Green Road photos

Morning Ian

Forgot to send these on yesterday before I left. Sorry about that!

R:\CHL\Leisure Recreation and Sport\Countryside Recreation\PROWs\Ongoing Investigations\Rousky- Greencastle-Green Road PROWDetailed Survey

Thanks
Imelda

Imelda McCarron
Countryside Management Officer
Marble Arch Caves UNESCO Global Geopark
Mob: +44 (0) 7542226867

Re: Green Road

John Boyle <john.boyle@fermanaghomagh.com>

Fri 10/07/2020 09:52

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

Thanks Imelda,

Can you please give me a call when you get a chance.

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

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

Sent: 10 July 2020 9:43 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

Subject: Re: Green Road

Morning John

Yea no new photos have been taken by then - we can arrange to get some if needed? The total length is 4.5km

Thanks

Imelda McCarron

Countryside Management Officer

Marble Arch Caves UNESCO Global Geopark

Mob: +44 (0) 7542226867

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 10 July 2020 09:27

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

Subject: Green Road

Imelda,

Ian has highlighted the photos of the Green Road to me which were uploaded to the R drive in 2016. Is this when the photos were taken. I would imagine that the route has not changed much since then?

What distance is the route that we are considering asserting?

Thank you

John

John Boyle

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

Telephone: 0300 303 1777
Extension: 21002



Re: Green Road

Imelda McCarron <imelda.mccarron@fermanaghomagh.com>

Wed 15/7/20 1:11 PM

To: John Boyle <john.boyle@fermanaghomagh.com>

No worries John, I'll look into this and come back to you as soon as I can

Thanks

Imelda McCarron
Countryside Management Officer
Marble Arch Caves UNESCO Global Geopark
Mob: +44 (0) 7542226867

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 15 July 2020 11:45

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

Subject: Re: Green Road

Imelda,

Thanks for prompt reply. The drone licence will be invaluable - as part of getting your licence you have to do so many hours 'flying' - and this could possibly be regarded as part of gaining that experience. Having said that I think it is best to get someone who has their full licence in place - given the sensitivities that exist in this case. I think it would be good to organise a workshop for Members where we show them the route and discuss the options surrounding assertion v the dangers of not asserting. Only thing is I would like that to happen sooner rather than later. Would it please be possible for you to get a price for undertaking the survey and inform all relevant landowners that this is happening.

Many Thanks

John

John Boyle

Director of Community, Health and Leisure

Fermanagh & Omagh District Council

Telephone: 0300 303 1777

Extension: 21002

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

Sent: 15 July 2020 10:17 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

Subject: Re: Green Road

Morning John,

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

Subject: Re: Green Road

Thanks Imelda,
Can you please give me a call when you get a chance.
John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

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

Sent: 10 July 2020 9:43 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

Subject: Re: Green Road

Morning John

Yea no new photos have been taken by then - we can arrange to get some if needed? The total length is 4.5km

Thanks

Imelda McCarron

Countryside Management Officer

Marble Arch Caves UNESCO Global Geopark

Mob: +44 (0) 7542226867

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 10 July 2020 09:27

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

Subject: Green Road

Imelda,

Ian has highlighted the photos of the Green Road to me which were uploaded to the R drive in 2016. Is this when the photos were taken. I would imagine that the route has not changed much since then?

What distance is the route that we are considering asserting?

Thank you

John

John Boyle

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

Green Road PRow

John Boyle <john.boyle@fermanaghomagham.com>

Wed 01/07/2020 12:16

To: Creaa McManus <creea.mcmanus@fermanaghomagham.com>

 1 attachments (74 KB)

200708-Draft Green Road PRow.docx;

Creaa,

Please find attached draft report on the Green Road PRow. Can I please ask you to put it into some sort of shape - adjust at will to make sense.

Thank you

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002



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

Report to:	Regeneration and Community Committee	Agenda Item: X
Report Title:	Green Road Public Right of Way	(Paper X)
Date:	8 July 2020	
Report by:	Director of Community, Health and Leisure	
For Publication:	Yes	
	If 'not for publication', Insert reference to grounds upon which information is deemed 'confidential' [ref Local Government (Northern Ireland) Act 2014 section 42(2), (3)] or 'exempt' [ref Local Government (Northern Ireland) Act 2014 section 42(4) Schedule 6]:	
(i) Confidential grounds:	N/A	
(ii) Exempt grounds:	N/A	

1. Relevant Background and Introduction

1.1 The purpose of the report is to provide Members with an update on the estimated costs associated with any potential County Court proceedings in asserting the Green Road as a Public Right of Way (PRoW), and to note the future process of assertion.

1.2 A recommendation to proceed with the assertion process was deferred at the June Regeneration and Community Committee meeting pending consideration of a report on the costs associated with any potential County Court proceedings and the future protection of the Green Road PRoW.

2. Key Issues

2.1 Potential costs associated with assertion of the Green Road as a PRoW

2.1.1 In order to assert the Green Road as a PRoW all landowners directly affected must agree to the assertion. If there are landowners who are not content with the decision the Council will be required to issue court proceedings to the County Court against each defendant, on an individual basis. Following a County Court ruling should either party wish to appeal the decision this appeal would be heard in the High Court.

2.1.2 Costs associated with the court case will be on the equity scale. County Court costs should be capped at approximately £4,000 per party to the proceedings (per defendant) for the first day, and £1,200 per defendant for every day thereafter. Further legal costs are estimated at £5,000 for proceedings lasting for one day, and £3,000 for each subsequent day.

2.1.3 If five landowners did not consent to the route being asserted as a PRow the costs in the County Court, for a process lasting 2 days, would therefore be £34,000 (£20,000 court costs for the first day, £6,000 court costs for the second day, £5,000 legal costs for the first day and £3,000 legal costs for the second day).

2.1.4 If an appeal were to take place to the High Court, following the County Court proceedings, costs would be in the same magnitude as those experienced in the County Court.

2.2 Responsibilities of Council in relation to PRow

2.2.1 The Council has a duty to:

- Assert, protect and keep open and free from obstruction any PRow
- Compile and preserve maps of the rights of way in its area
- Signpost paths, where necessary, to help anyone who does not know the area
- Contribute at least a quarter of the cost of maintaining stiles and gates

Aside from that, should the Council so decide to, it also has the powers to:

- Maintain any PRow
- Authorise the erection of new stiles and gates

2.2.2 The onus does not fall on the Council to maintain the PRow but if the Council does decide to maintain the PRow, the Council will then become responsible for the Public Liability of the route. If not, the landowner will be responsible for liability.

2.2.3 The standard to which a PRow needs to be maintained is minimal, particularly in rural areas – only enough so that those who are reasonably fit in light active gear can easily pass. However, if the Council does agree to take on responsibility of maintenance there are wider obligations about visitor safety and so this standard may not be acceptable.

2.2.4 Regardless if the Council agrees to maintain or not, the Council has a duty to ensure the landowner doesn't intentionally block the PRow. If he/she does, the Council must remove the obstruction. It should agree works with the landowner but if agreement can't be met, then legal advice may need to be sought.

2.3 The next steps in the asserting the Green Road as a PRow were outlined in the Regeneration and Community Committee report in June 2020. These included:

- Review the list of landowners to establish that no details have changed since the Council were last in contact;
- Personally contact each landowner to inform them that the Letter of Claim for assertion of the Green Road as a PRow is on its way. In this way landowners will not be surprised by inclusion in the letter of the prospect of being taken to Court. This process could be completed in a number of weeks;
- Issue Letter of Claim to landowners and allow a period of up to 4 weeks for return.
- For those who do not agree with the proposed assertion of the Green Road as a PRow issue court proceedings to the County Court;
- Await the cases to be heard in the County Court - this could take a period of 6-12 months from the date of lodgement.

3. Resource Implications

3.1 Financial

Potential estimated financial costs of litigation are as follows

	Court Costs	Legal Costs
First day of proceedings	£4,000 per defendant	£5,000
Second and subsequent days of proceedings	£1,200 per defendant	£3,000

If the Council agrees to maintain the Green Road PRow the annual cost is estimated between £1,500 and £2,000 per annum.

3.2 Human Resources

Officer time will be required in asserting the route as a PRow, included in normal budgets

3.3 Assets and Other Implications

The Council may decide to maintain the PRow in the future.

4. Equality and Good Relations Implications

4.1 Equality

There are no negative Equality implications.

4.2 Good Relations

There are no negative Good Relations implications.

5. Sustainable Development Implications

This initiative supports the social pillar of sustainable development.

6. Rural Proofing Implications

There are no negative rural proofing implications.

7. District Electoral Areas Affected

Mid Tyrone

8. Recommendation

It is recommended that Fermanagh and Omagh District Council:

- i. notes the potential estimated costs of asserting the Green Road as a PRow;
- ii. notes the responsibility of the Council in maintaining the PRow;
- and
- iii. notes the future steps necessary in asserting the Green Road as a PRow;

9. Appendices and Attachments

N/A

10. Background Documents

N/A

Key to Abbreviations:

PRow Public Right of Way

Philip Kingston <Philip.Kingston@derrystrabane.com>

Tue 7/7/20 12:53 PM

To: John Boyle <john.boyle@fermanaghomagh.com>

CAUTION: This message originates from outside our organisation. Consider carefully whether you should click on any links, open any attachments or reply. If in doubt, forward to helpdesk@fermanaghomagh.com

John,

I'm on leave tomorrow but I'm not going anywhere so happy to dial in.

PK.

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 07 July 2020 12:40

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

Subject: [SUSPICIOUS MESSAGE] ;

This Message contains suspicious characteristics and has originated outside your organization.

Philip,

Can I ask if you would be available to attend the R&C Committee meeting tomorrow afternoon (4pm - 7pm)? I would think that there may be some legal questions regarding the Green Road.

Please let me know if it suits - apologies I don't want to be tying you up.

Many thanks

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 02 July 2020 11:09 AM

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

Subject: F

Philip,

In light of the correspondence would you feel I need to change the draft report to Committee to include costs of successful litigants should we lose (not keen on this one) and the costs of witnesses - which I don't think we have factored in.

Not sure if I understand Point 3 on compensation which will result on successful assertion.

Many Thanks

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Sent: 02 July 2020 10:46 AM
To: Philip Kingston <Philip.Kingston@derrystrabane.com>
Cc: John Boyle <john.boyle@fermanaghomagh.com>
Subject:

Good Morning Philip,

Please see attached which I have acknowledged; could you please review and indicate how we should proceed in terms of reporting (no particular issue re this) and the associated queries? I assume we can take this as official notification to oppose the assertion?

thanks,

Alison

From: K
Sent: 02 July 2020 10:24
To: Tommy Maguire (Councillor) <tommy.maguire@fermanaghomagh.com>
Cc: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>; Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>
Subject:
N

CAUTION: This message originates from outside our organisation. Consider carefully whether you should click on any links, open any attachments or reply. If in doubt, forward to helpdesk@fermanaghomagh.com

Dear Sirs

Please find attached letter.

Yours faithfully,

Philip Kingston <Philip.Kingston@derrystرابane.com>

Thu 2/7/20 11:51 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

CAUTION: This message originates from outside our organisation. Consider carefully whether you should click on any links, open any attachments or reply. If in doubt, forward to helpdesk@fermanaghomagh.com

Regards,
Philip.

From: John Boyle [mailto:john.boyle@fermanaghomagh.com]

Sent: 02 July 2020 11:09

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

Subject: :

This Message contains suspicious characteristics and has originated outside your organization.

Philip,

In light of the correspondence would you feel I need to change the draft report to Committee to include costs of successful litigants should we lose (not keen on this one) and the costs of witnesses - which I don't think we have factored in.

Not sure if I understand Point 3 on compensation which will result on successful assertion.

Many Thanks
John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

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Cc: John Boyle <john.boyle@fermanaghomagh.com>

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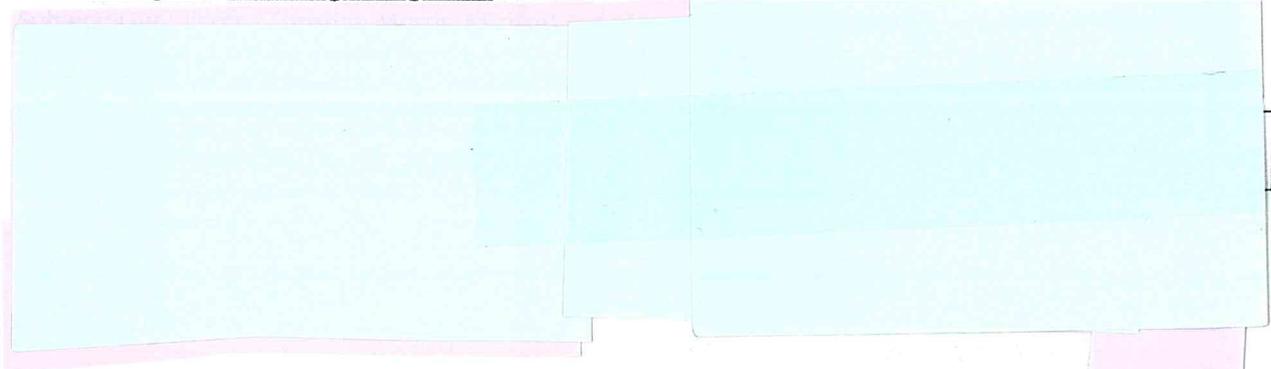
Alison

From:

Sent: 02 July 2020 10:24

To: Tommy Maguire (Councillor) <tommy.maguire@fermanaghomagham.com>

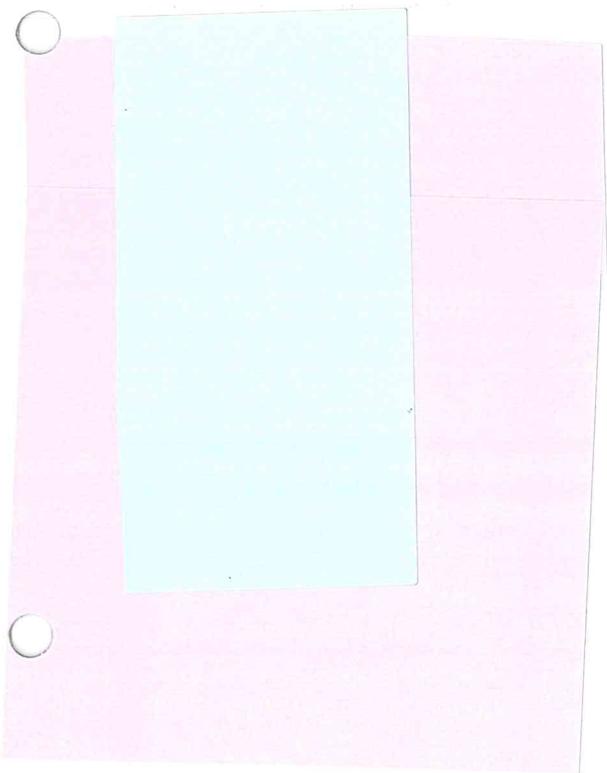
Cc: Alison McCullagh <alison.mccullagh@fermanaghomagham.com>; Kim McLaughlin <kim.mclaughlin@fermanaghomagham.com>



Dear Sirs

Please find attached letter.

Yours faithfully,



Re: Green Road

Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Thu 09/07/2020 15:23

To: [redacted] <[redacted]@[redacted].com>

Thanks

Sorry I was on leave yesterday, but I heard some of the debate.

I think we have all the details we need, but might well come back to you on this,

Kind regards,

Alison

From: [redacted]

Sent: 08 July 2020 15:27

To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Subject: Green Road

Alison I have declared a interest in this issue because one of the objectors is related to me.You are probably aware of who I am referring to.I could give information to the council officers dealing with this case if appropriate.

Sent from Mail for Windows 10

RE: (

n>

Thu 09/07/2020 14:42

To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

CAUTION: This message originates from outside our organisation. Consider carefully whether you should click on any links, open any attachments or reply. If in doubt, forward to helpdesk@fermanaghomagh.com

Ms McCullagh

Many thanks for your swift response. Much appreciated.

Regards

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Sent: 09 July 2020 14:38

To:

Subject:

Dear

I was not at the meeting, but my understanding is consideration of the matter had not concluded before the meeting ended. As such, it will be considered at the next Regeneration and Community Committee.

My understanding is a full Webex recording is being uploaded as there seems to have been some difficulty with Youtube, so you should be able to hear the debate.

Regards,

Alison McCullagh

Chief Executive
Fermanagh and Omagh District Council

From: _____ <_____.com>

Sent: 09 July 2020 14:33

To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>

Subject:

CAUTION: This message originates from outside our organisation. Consider carefully whether you should click on any links, open any attachments or reply. If in doubt, forward to helpdesk@fermanaghomagh.com

Good afternoon Ms McCullagh

I will proceed on that basis,

Regards,

Alison McCullagh

Chief Executive
Fermanagh and Omagh District Council

From:
Sent: 07 July 2020 11:15
To: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Subject: RE:

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y,

Dear Ms McCullagh,

Many thanks for your email below. I confirm that I have no issue with the names of my clients remaining on the letter when it is circulated around the Councillors. I would however ask that my clients' names and also my reference at the top of the letter () be redacted should it be published in wider papers.

I trust this clarifies matters however please do not hesitate to revert to me again.

Regards

 Description:
cid:image004.jpg
@01CD29DE.124
FF180

Many thanks

Regards

From: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>
Sent: 02 July 2020 10:45
To: _____ >; Tommy Maguire (Councillor) <tommy.maguire@fermanaghomagh.com>
Cc: Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>
Subject: _____

Dear

I wish to confirm receipt of your correspondence and to advise that it has been forwarded to our legal representatives for their review and attention.

Regards,

Alison McCullagh

Chief Executive
Fermanagh and Omagh District Council

From: _____ >
Sent: 02 July 2020 10:24
To: Tommy Maguire (Councillor) <tommy.maguire@fermanaghomagh.com>
Cc: Alison McCullagh <alison.mccullagh@fermanaghomagh.com>; Kim McLaughlin <kim.mclaughlin@fermanaghomagh.com>
Subject: _____

CAUTION: This message originates from outside our organisation. Consider carefully whether you should click on any links, open any attachments or reply. If in doubt, forward to helpdesk@fermanaghomagh.com

Dear Sirs

Please find attached letter.

Yours faithfully,

Our Ref:

Your Ref:

Date:

2nd July 2020

Mr Tommy Maguire
Chair of Regeneration and Community Committee
Fermanagh & Omagh District Council
The Grange
Mountjoy Road
Omagh
County Tyrone
BT79 7BL

FIRST CLASS POST AND EMAIL

Dear Sir

**Re: Lands at Greencastle and Ruskey, County Tyrone
Our Clients –**

We refer to the debate which took place at the Regeneration and Community Committee on 9 June 2020 in respect of the alleged public right of way over land described as the "Green Road", near Greencastle.

As previously advised, we act for the above-named clients, all of whom object to Fermanagh and Omagh District Council's (FODC) proposed assertion of this so-called right of way and whose intention it is to resist any such assertion, which has been clearly documented. The reference at paragraph 3.1.2 of the written report to the Regeneration and Community Committee on 9 June to "potential costs" of issuance of proceedings in the County Court is, in our view, misleading as Council officers had clear notice that, should the Council proceed with the proposed assertion, costs of proceedings are inevitable and not merely potential.

Indeed, the strength of opposition on the part of our clients and also on the part of other land owners is such that the costs of proceedings could be many hundreds of thousands of pounds. In this current climate of financial uncertainty and pressure on public finances, we welcome the decision by the Committee to have the matter reconsidered to determine whether the Council should get involved in this at all.

We now wish to set out a number of factors which we believe should be taken into consideration:

1. Potential liabilities from costs arising

For the sake of clarity and full transparency around potential liabilities arising, any report to your Committee on this 'Green Road' subject should advise the Council around:

Partners:

Brian MacMahon LLB
Francis Redmond LLB

Associates:

Róisín M Cross LLB
Jason McLaren LLB

Maire MacMahon LLB
Rebecca McElhatton LLB

Kevin McElduff LLB
Michael Redmond LLB

Katherine Holland LLB
Grainne Clarke LLB

Lexcel
Practice Management Standard
Law Society Accredited

Our clients wish to make it clear that they have no wish to become embroiled in a legal dispute with FODC. However, they are equally clear in their determination to protect their rights with regards to their own private lands. We would therefore appeal to you and your Council colleagues to reflect on this now and discontinue the Council's involvement in the 'Green Road' issue.

We would appreciate it if you would acknowledge receipt of this letter and confirm that a copy of it will be provided to all your Committee members, as well your Council Officers.

Yours faithfully,



CC. Kim McLaughlin, Director of Regeneration and Planning
Alison McCullagh, Chief Executive

Fw: Green Road photos

Ian Davidson <ian.davidson@fermanaghomagh.com>

Fri 10/7/20 8:02 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

FOR INFORMATION

John

File link below for images of Green Road. I would say it's a long time since anyone cycled this....

Regards

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

Sent: 10 July 2020 07:53

To: Ian Davidson <ian.davidson@fermanaghomagh.com>

Subject: Green Road photos

Morning Ian

Forgot to send these on yesterday before I left. Sorry about that!

R:\CHL\Leisure Recreation and Sport\Countryside Recreation\PROWs\Ongoing Investigations\Rousky- Greencastle-Green Road PROWDetailed Survey

Thanks

Imelda

Imelda McCarron

Countryside Management Officer

Marble Arch Caves UNESCO Global Geopark

Mob: +44 (0) 7542226867

Re: Green Road

John Boyle <john.boyle@fermanaghomagh.com>

Fri 10/07/2020 09:52

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

Thanks Imelda,

Can you please give me a call when you get a chance.

John

John Boyle

Director of Community, Health and Leisure

Fermanagh & Omagh District Council

Telephone: 0300 303 1777

Extension: 21002

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

Sent: 10 July 2020 9:43 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

Subject: Re: Green Road

Morning John

Yea no new photos have been taken by then - we can arrange to get some if needed? The total length is 4.5km

Thanks

Imelda McCarron

Countryside Management Officer

Marble Arch Caves UNESCO Global Geopark

Mob: +44 (0) 7542226867

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 10 July 2020 09:27

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

Subject: Green Road

Imelda,

Ian has highlighted the photos of the Green Road to me which were uploaded to the R drive in 2016. Is this when the photos were taken. I would imagine that the route has not changed much since then?

What distance is the route that we are considering asserting?

Thank you

John

John Boyle

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

Telephone: 0300 303 1777
Extension: 21002



Re: Green Road

Imelda McCarron <imelda.mccarron@fermanaghomagh.com>

Wed 15/7/20 1:11 PM

To: John Boyle <john.boyle@fermanaghomagh.com>

No worries John, I'll look into this and come back to you as soon as I can

Thanks

Imelda McCarron
Countryside Management Officer
Marble Arch Caves UNESCO Global Geopark
Mob: +44 (0) 7542226867

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 15 July 2020 11:45

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

Subject: Re: Green Road

Imelda,

Thanks for prompt reply. The drone licence will be invaluable - as part of getting your licence you have to do so many hours 'flying' - and this could possibly be regarded as part of gaining that experience. Having said that I think it is best to get someone who has their full licence in place - given the sensitivities that exist in this case. I think it would be good to organise a workshop for Members where we show them the route and discuss the options surrounding assertion v the dangers of not asserting. Only thing is I would like that to happen sooner rather than later. Would it please be possible for you to get a price for undertaking the survey and inform all relevant landowners that this is happening.

Many Thanks
John

John Boyle
Director of Community, Health and Leisure
Fermanagh & Omagh District Council

Telephone: 0300 303 1777
Extension: 21002

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

Sent: 15 July 2020 10:17 AM

To: John Boyle <john.boyle@fermanaghomagh.com>

Subject: Re: Green Road

Morning John,

Re: Green Road

Imelda McCarron <imelda.mccarron@fermanaghomagh.com>

Wed 15/07/2020 10:17

To: John Boyle <john.boyle@fermanaghomagh.com>

Morning John,

This is a possibility - we at the geopark are working on attaining our drone licences but due to Covid we haven't been able to do the practical exam and won't be for a while yet so we'd have to pay for someone to fly it professionally. We had got someone to do it before for Necarne and he was about £500. As far as I understand we wouldn't need permission per se as under the Countryside Act we have the power to carry out investigations under the assertion process. Having said that, as a matter of courtesy I think it would be good practice to send them a letter in advance of it happening.

Thanks

Imelda

Imelda McCarron
Countryside Management Officer
Marble Arch Caves UNESCO Global Geopark
Mob: +44 (0) 7542226867

From: John Boyle <john.boyle@fermanaghomagh.com>

Sent: 15 July 2020 09:45

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

Subject: Re: Green Road

Imelda,

I was thinking about the Green Road over the weekend and the possible issues with bringing a group of Councillors up to see it for a site visit. As an alternative would it be possible to get drone footage of the entire 4.5km route? In order to take such footage do we need the approval of the land owners?

Welcome your thoughts.

Thank you

John

John Boyle

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

Telephone: 0300 303 1777

Extension: 21002

From: John Boyle <john.boyle@fermanaghomagh.com>

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John Boyle

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

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