

County Council refuses question for Full Council: email trail

10 January 2020

Dear Simon

Thank you for your e-mail dated 7 January 2019.

My role is only to look at your request to attend Council during public participation and therefore I cannot comment on the substantive issues relating to the possible creation of a footpath.

The material point here is that there has already been a separate complaints process in respect of the footpath creation order and the Public Participation Scheme specifically precludes the scheme being used "where there is already an existing right of appeal or a separate complaints process".

The point as to the correct decision maker is secondary. At Cumbria County Council, the creation of footpaths would be dealt with by the Development, Control and Regulation Committee not Council. However, if this had been the only issue in respect of your request to attend under the Public Participation Scheme my team would have worked with you to consider either attending a different committee or to consider amending the wording of your request.

The Public Participation Scheme does not contain an appeals process.

Kind regards

Iolanda Puzio

Chief Legal Officer (Monitoring Officer)

Corporate, Customer & Community Services | Cumbria County Council

Cumbria House | 117 Botchergate | Carlisle | CA1 1RD

t: 07919298368

On 7 Jan 2020, at 15:17, Simon Smith <caldbeckparishclerk@gmail.com> wrote:

Hi Iolanda

Last week Jackie Currie agreed that if Caldbeck Parish Council wished to make any representations about your decision to refuse its question for 9 January 2020 County Council, it would be sensible to make them direct to you.

You won't be surprised to hear that your decision has not been well received by the Parish Council and I have been asked to raise the following points. I'd be very grateful for your comments: the Parish Council has a meeting on 13 January 2020 and will take a decision on next steps. If it's easier to have a brief discussion, please do telephone.

You've concluded that the Parish Council's question should be refused as there has already been a separate complaints process (point e of the exclusions) on the footpath and putting full Council in the position of appeals forum would be wholly inappropriate. You state that the complaints process concluded that the decision not to support a footpath

creation order had been taken correctly and by the authorised decision maker citing the independent reviewer's second report dated 26 April 2018.

You go on to say, a meeting of full Council is not the authorised decision maker in this matter which means it "*could not require the Council to use its powers to issue a footpath creation order*", whether by motion or otherwise. So the question would also be excluded as it is inappropriate to ask full Council to do something it is not authorised to do (point f of the exclusions).

The Parish Council takes issue with your ruling on a number of grounds.

The County Council has a scheme of delegation and officer decisions but its Constitution is explicit that those giving the delegation can choose to exercise the function: "*Where a power has been delegated to an officer the person or body that has delegated the function is not prevented from exercising the function.*" (Constitution Part 3 paragraph 2.4). That gives Councillors the final say should they so wish. Councillors are able to submit motions to County Council and ultimately, if Councillors feel strongly about an issue, they do have a mechanism for asserting their view. I recognise that this is our understanding of the position but you may well have a different perspective.

As regards the footpath, the Parish Council requested an independent review of the decision not to support the footpath as suggested by Allerdale Local Committee in December 2017. The Parish Council did not raise a complaint; it was the County Council that chose to classify the Parish Council's request as a complaint. The independent reviewer assured the Parish Council that he would address the merits of the decision not to support the footpath. That is what he did in his original report and he concluded the County Council should support the footpath. The County Council then attempted to bury his report which the Information Commissioner ruled had to be released.

Far from being vexatious, the Parish Council is simply wanting to establish the footpath and believes that County Councillors should be able to express their views. A number of County Councillors are also Carlisle City Councillors and that local authority has taken a very different view to using its powers of issuing a Footpath Creation Order in the Waverley Viaduct case. The County Council says it will only issue a Footpath Creation Order where all landowners are in agreement but in these circumstances there is of course no need for a Footpath Creation Order. If you'll excuse the directness, the County Council's position seems absurd - it will only use its powers when they are not needed.

I would very much welcome any comments you might have on the points I raise:

How those giving delegations can choose to exercise the functions themselves and if there are limitations (Constitution Part 3 paragraph 2.4);

Whether there are limitations on the ability of Councillors to submit motions;

The differences between an independent review of an officer decision and the handling of a complaint.

Finally, is there any right of appeal regarding your ruling on not allowing our question?

I look forward to hearing from you. I appreciate you'll be very busy with County Council etc: if you will not be able to reply or telephone before the Parish Council's 13 January meeting, it would be very helpful to know.

Kind regards

Simon Smith
Caldbeck Parish Council Clerk
Sandale Barn, Sandale, Boltongate, Wigton CA71DE
016973 71008

3 January 2020

Thank you for your email Simon. I have discussed your request with the Monitoring Officer.

The question you have set out is not an appropriate question for a full Council meeting.

Asking questions at the various meetings of the Council are an important part of the Council's Public Participation Scheme (PPS). However, there are limits set out at paragraph 2.12 of the PPS (Part 6 of the Council's Constitution). These limits exclude certain matters from being raised as questions and relevant to your proposed question are the following exclusions:

- (e) A matter where there is already an existing right of appeal or a separate complaints process;
- (f) Anything the County Council considers to be vexatious, abusive or otherwise inappropriate;

There has already been a separate complaints process on the footpath creation order you seek. With regard to (e) above your proposed question would be excluded on this basis alone. Your proposed question to full Council would, in effect, put full Council in the position of appeals forum to that complaints process which is wholly inappropriate. The complaints process concluded that the decision not to support a footpath creation order had been taken correctly and by the authorised decision maker. This conclusion was set out in Dan Barton's report dated 26 April 2018.

Furthermore, a meeting of full Council is not the authorised decision maker in this matter which means it "*could not require the Council to use its powers to issue a footpath creation order*", whether by motion or otherwise. This in turn means your question would also be excluded with regard to (f) above as it is inappropriate to ask full Council to do something it is not authorised to do.

I appreciate that this is not the answer you would have hoped for but, as a general point, the PPS is not an alternative means of securing outcomes that the Council has already considered in other ways.

Many thanks

Jackie Currie
Professional Lead - Democratic Services
Legal & Democratic Services

Cumbria County Council| Cumbria House
Botchergate|Carlisle|Cumbria CA1 1RD
Tel: [01228 221030](tel:01228221030) Mobile [07919 056193](tel:07919056193)
Email jackie.currie@cumbria.gov.uk

From: Simon Smith <caldbeckparishclerk@gmail.com>
Sent: 02 January 2020 06:31
To: Democratic Services <democratic.services@cumbria.gov.uk>
Subject: Re: Public Participation County Council Thursday 9 January 2020

Hi Lynn

I think you're back in the office today and I am very keen to have confirmation that Caldbeck Parish Council can ask the following question at County Council on Thursday 9 January:

"In light of the independent reviewer's original report concluding that the County Council should support the establishment of a direct footpath between Caldbeck and Hesket Newmarket, the recent restatement of local support for the footpath, the dangers confronting those walking or cycling along the road, and the generous donation which would fund a public asset of lasting benefit to the community and which would have to be returned if the footpath is not established, will County Councillors require the County Council to use its powers to issue a Footpath Creation Order, if necessary by proposing such a motion at a future meeting of the County Council?"

I don't know if you can help but I'm wanting to send all County Councillors some background information on this. Two years ago when contacting all County Councillors, I recall having to spend some time copying and pasting 84 email addresses - is there an 'All Councillors' link you'd be able to let me have?

I do hope you've had a good break and happy new year.

Many thanks

Simon

Simon Smith
Caldbeck Parish Council Clerk
Sandale Barn, Sandale, Boltongate, Wigton CA71DE
[016973 71008](tel:01697371008)