

CALDBECK PARISH COUNCIL

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Ms Katherine Fairclough
Chief Executive
Cumbria County Council

2 August 2018

Dear Ms Fairclough

I am writing following receipt of the County Council's response to Caldbeck Parish Council's request for documents under Freedom of Information to ask you to review your decision not to release a document where you claimed exemption and to ask for an urgent meeting with the County Council's Leader, relevant Portfolio Holders, and yourself. Rory Stewart MP and Sue Hayman MP have agreed to attend the meeting.

On 14 May 2018 Caldbeck Parish Council received the County Council's review of its decision not to support a Footpath Creation Order to establish a footpath between Caldbeck and Hesket Newmarket. On 29 May 2018 we requested documents under Freedom of Information legislation with a statutory deadline of 27 June 2018. On 10 July 2018 the County Council sent its response.

We were disappointed that you have chosen to claim exemption from releasing the report produced by Dan Barton which we now learn was sent to you on 21 February 2018. Without sight of that report we are not able to know what changes were made between it and the report dated 26 April 2018 which you sent us.

We were extremely concerned that the 26 April 2018 report only considered processes, not the merits of the decision. The report states in para 5.1: "Subsequent to receiving a letter from the Parish Council on 6 December 2017, the Chief Executive commissioned a review tasked with finding out whether the decision-making process was appropriately followed." We therefore asked for a copy of your commissioning of the review. We note there is no written commission and hence there is no evidence as to whether the merits of the decision were included or excluded from the scope of the review.

In these circumstances we can only refer to the assurances given to us by Dan Barton when we met on 5 February 2018 that he would examine the merits of the decision. We were insistent that whilst we had concerns about the process, the whole point of the review was to receive a fair hearing for our case, with a recognition of the wider public benefits from the footpath, and for the County Council to change its mind and pursue a Footpath Creation Order. Dan Barton was explicit that it would be possible for his review to conclude that the decision not to pursue a Footpath Creation Order should be reversed. It was clear to us from what he said that he would be looking at the merits of the officer decision which we had asked to be reviewed.

You will appreciate that we are able to ask the Information Commissioner to review your claimed exemption for not releasing Dan Barton's report dated 21 February 2018 and make the following points:

- Our letter dated 6 December 2017, which you treated as a complaint. requested a review of the officer decision not to pursue a Footpath Creation Order, not just the process.

- The report dated 26 April 2018 reviewed the process, not the decision but there is no record of your decision to limit the scope of the report when commissioning the review.
- When we met on 5 February 2018 Dan Barton assured us his report would examine the merits of the decision.
- You claim that the report dated 21 February 2018 Dan Barton sent to you was draft. However, the Constitution makes clear the the Assistant Director sends his report to the Chief Executive and Corporate Director to sign off. Dan Barton stated in his email dated 26 February 2018 that he had completed [my emphasis] his report and submitted it to you. Hence we argue that Dan Barton's report dated 21 February 2018 was the reviewer's report and not a draft report.
- Furthermore, transparency is an overriding consideration when applying the public interest test in this case, even if the report were a draft. Transparency is important as it seems to us highly likely that the scope of the report dated 26 April 2018 and its findings had changed significantly from the reviewer's completed report dated 21 February 2018.

Having consulted the Office of the Information Commissioner, we are advised to write to you asking that you reconsider your decision to withhold Dan Barton's report dated 21 February. If you have not provided the report by 16 August 2018, the advice from the Office of the Information Commissioner is that we then formally invite the Information Commissioner to undertake an investigation and conclude whether to order you to provide the report. This we will do.

In the covering letter for the review the County Council stated this was its final response to the complaint and that if we were not satisfied we should go to the Local Government Ombudsman. But the Ombudsman is not allowed to consider complaints from one authority against another:

The law does not allow us to accept a complaint made by an 'authority constituted for the purposes of the public service'. This includes parish and town councils.

If the Audit Commission were still operating, we would certainly consider raising concerns with the District Auditor. The Audit Commission would have had the remit to look at the wider value for money concerns although it would be for the District Auditor to decide whether to examine the issues. We think it unlikely that current external audit arrangements provide a similar mechanism for considering value for money.

Hence Caldbeck Parish Council has no external avenue for redress of the decision not to pursue the Footpath Creation Order.

Whilst seeking release of Dan Barton's report dated 21 February 2018, we would ask again whether better sense might prevail and that the County Council helps find a solution so that a footpath is established and significant risks to pedestrians are reduced.

Our view remains that working collaboratively, the County Council, National Park and ourselves should be able to find a way of establishing the footpath. The National Park has offered staff resources for the Footpath Creation Order. We have the funds in place for compensation payments and the construction of the footpath, with on going maintenance costs built into the budget. But as we have argued in numerous letters, the County Council's support for a Footpath Creation Order is essential for the National Park to act.

We appreciate the financial pressures organisations face but believe the County Council should be prepared to discuss the risks of a Footpath Creation Order being challenged and how costs of defending the Order might be funded, including being prepared to make a fair contribution. We have always accepted that if at any point independent legal advice is that the risks of defending the Order are too high, we would follow that advice. We have consistently pressed for a joint meeting with the County Council, National Park and ourselves to explore collaborative working without success. We have also asked on several occasions to meet Cabinet Members, but with no response.

We are exploring all possible avenues to establish the footpath and harness support. On 10 July 2018 we met Allerdale Borough Council's, Alan Smith, Leader and John Crouch, Mayor to brief them on the Footpath proposals. They are very supportive and are considering what motions might be taken to Council. We have written to Allerdale Local Committee's Chair and Vice Chair asking if the footpath project might be included in Allerdale's listing of possible projects and await a reply.

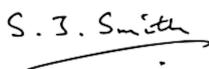
We have written again to MPs with Allerdale constituency interests. Rory Stewart and Sue Hayman have said they would be pleased to attend a meeting with the Leader, portfolio holders and yourself. I would very much appreciate receiving suggested dates and location for a meeting so that arrangements can be made. We have offered on several occasions to meet in Caldbeck but recognise it may be easier to meet in Carlisle.

I am copying this letter to Rory Stewart MP and Catherine Anderson, Rory Stewart's office, Sue Hayman MP, Stewart Young, Keith Little and Celia Tribble.

I am also copying this letter to your Information Governance Team in light of the Team's email dated 10 July 2018 as we are asking you to review your decision not to release a document we requested under Freedom of Information. The Office of the Information Commissioner can therefore see we have followed the necessary processes.

I look forward to hearing from you by 16 August 2018 and will be contacting the Information Commissioner should you not provide a copy of Dan Barton's report dated 21 February 2018.

Yours sincerely

A handwritten signature in black ink that reads "S. J. Smith". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Simon Smith