

CALDBECK PARISH COUNCIL

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Ms Katherine Fairclough
Chief Executive
Cumbria County Council
Cumbria House
117 Botchergate
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15 June 2019

Dear Ms Fairclough

Caldbeck - Hesket Newmarket footpath

Caldbeck Parish Council has now considered Dan Barton's report dated 21 February 2018. You will recall that we had asked for a copy of the report which you refused to provide. The Information Commissioner ordered you to release the report, which you did, albeit after the deadline.

I am writing to ask if you would be willing to meet, please, to discuss a way forward.

You appointed Dan Barton as the independent reviewer of the County Council officer decision not to assist the Parish Council with a Footpath Creation Order to bring about the Caldbeck - Hesket Newmarket direct footpath. That footpath was and is the most wanted yet undelivered item from our Parish Plan, and we have received a restricted donation of £100,000 for the land purchase/compensation and construction of the footpath.

Dan Barton's report dated 21 February 2018 concluded that you as Chief Executive should review the decision not to proceed, and the County Council should proceed with the Footpath Creation Order requested by the Parish Council.

We agree the conclusion of that report and believe a collaborative approach holds out the prospect of securing the footpath. The National Park has always been willing to provide the staff resources to take whatever legal steps are necessary. But it requires an indemnity in the event of successful challenge to an Order. We have the funds in place to pay for the footpath and ongoing maintenance.

Attempts at mediation have not as yet proved successful, with the two landowners rejecting Angela Jones' offer. There was a suggestion that Rory Stewart might be asked to see if he would help bring about mediation. He thought a more local approach should be attempted and Mike Johnson, our new County Councillor, has managed to talk to the two landowners. They are not at this point prepared to change their minds and agree to the footpath.

Our view is that mediation is more likely to make progress if it is made clear that we would like to proceed by agreement but if this proves impossible, then a Creation Order will be made. Without this 'stick', the two landowners have little incentive to discuss the footpath, let alone come to an agreement.

We consider it a matter of grave concern that a report prepared by the independent reviewer examining the merits of the County Council's decision not to support the footpath and finding in favour of the Parish Council was replaced by a second report simply examining the processes followed by the County Council. The Parish Council had been advised by Allerdale Local Committee to write to you requesting a review of the decision, the independent reviewer assured us that his report would address the merits of the decision, that is what his report did, but the County Council saw fit to prepare a second report with a completely different scope.

Let me draw your attention to the following pertinent details:

1. Shamin Lindsay wrote to our clerk Simon Smith on 4 December 2017 saying: *"There is nothing to prevent the Parish Council from making further representations to the Corporate Director or Chief Executive on this matter."*

2. The Parish Council was advised by the Allerdale Local Committee Chairman on 5 December 2017 to write to you requesting a review of the officer decision not to help.

3. We wrote to you on 10 December 2017 (not 6 December as mentioned in the second report dated 26 April 2018) asking that the decision be reviewed. Our request was clearly asking you to address the merits of the decision, not just the process. You subsequently chose to treat the letter as a complaint but it was not a complaint. We were requesting a review of the merits of the decision and we object strongly that you have seen fit to exclude examination of the merits of the decision from the scope of the second report.

4. You appointed Dan Barton to make the independent review. He wrote to Simon Smith, our Clerk, on 1 February 2018 explaining: *"As far as terms of references for the investigation go, there are none as this investigation falls outside the normal customer complaints process. However, it is my understanding that the Chief Executive wanted to follow this concern up in a manner which closely mirrored this successful policy. As such, I am reviewing the case as an independent senior officer (i.e. sitting outside of the directorate which would normally make such decisions)."*

5. We met Dan Barton on 5 February 2018. He assured us that his report would address the merits of the decision and his first report dated 21 February 2018 did so.

6. The County Council clearly saw fit to try and bury that first report by instructing him to prepare a second report confined to process only. That second report dated 26 April 2018 states: *"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."* That conflicts with his email of 1 February 2018 and what he had expressly told us 4 days later and is confirmed by his first report.

7. The Explanatory Note sent with the first report upon its eventual disclosure on 26 April 2019 says that the Complaints Policy requires the Review Stage to review whether the complaint was fully and fairly considered and everything possible was done to resolve the complaint. In other words, the Note argues, the Complaints Policy Review Stage considers the decision-making process, not the decision itself. That is with respect an incorrect construction of your own Complaints Policy. To consider something fully and fairly requires looking at the merits. You appointed Dan Barton to review the officer decision without any restriction on his examining the merits, until he produced his first report.

8. It seems inconceivable that your legal department sought to dismiss Dan Barton's original report by alleging the Assistant Director did not understand his brief. Like us, the Information Commissioner does not believe this was the case and ordered the report's release, going on to say: "*The author of the review is an Assistant Director at the County Council. The Commissioner considers that senior officers should have the courage and independence not to be dissuaded from providing the information which is required in order for the review to provide a fully informed decision...*". Clearly Dan Barton's original report should have been acted upon, rather than hidden away just because it concluded that the officer decision we asked you to review be reversed.

If you are not minded to explore a collaborative approach, the Parish Council will continue to press for the footpath using whatever channels it chooses. You will recall in December 2017 we used the County Council's Public Participation arrangements to ask a question at Allerdale Local Committee and would next raise the issue at County Council. We believe our case is strong and would be supported by the vast majority of Cumbria council tax payers. They will not be impressed with the County Council's re-writing of an independent report and attempts to prevent our seeing the original report. We want to deliver the footpath and we do not want to have to return the £100,000 donation because of the County Council's refusal to help us, against the advice of its own independent review.

Opportunity for collaborative working was available more than 2 years ago and no doubt significant resources have been used in saying 'no' and defending the County Council's position up to and including the Information Commissioner. These costs would be of legitimate public interest.

We very much hope that you will respond positively to our suggestion to meet us and explore how a collaborative approach might enable progress on securing the footpath to be made and we look forward to receiving your reply by 1 July 2019.

Yours sincerely

pp

S. J. Smith

**Tim Cartmell,
Chairman Caldbeck Parish Council**