

McNally, Frank

From: Anketell, Gerry
Sent: 04 July 2002 09:37
To: Clarke, Raymond
Cc: McNally, Frank; Carlisle, Jim; McCleary, Anne; McKibbin, Malcolm; Orr, David (Roads)
Subject: Arch @ Garvaghy Road

Raymond,

A decision has been taken to issue consent in respect of the erection of this arch. Would you please arrange accordingly and fax a copy of it to me on (90) 40437. Anne is contacting Chief Inspector McCrum of the PSNI by phone to advise him.

Regards,

Gerry Anketell

J G Anketell

Policy & Communications Branch

Roads Service HQ

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APPLICATION FOR CONSENT TO THE ERECTION OF AN ORANGE ARCH AT GARVAGHY ROAD, PORTADOWN.

REQUIREMENTS OF THE ROADS ORDER 1993

The requirements of the 1993 Order have been met -

Insurance cover

Start and stop dates

Engineer's certificate

HUMAN RIGHTS AND SECTION 75 CONSIDERATIONS

- The arch in question has been erected for a considerable number of years at this location. There has been a tradition of issuing consents in respect of this arch, at this location. Nothing of significance is believed to have changed in terms of relevant circumstances this year.
- Consents have been obtained over the last few years, and the lodge has complied with any conditions.
- The arch is an expression of religious belief/ cultural identity, and therefore engages Article 10 Human Rights Act (freedom of expression) - as seen in the drawing on file.
- Any complaints in the past relate to the granting of planning permission rather than human rights, or section 75 considerations - see letters from P.Drinan in 1999.
- There has been trouble at the erection of the arch in the past, requiring a significant police presence when the arch is erected and, e.g. in 1999 catapulting of ball-bearings by children. No serious injury has occurred.
- PSNI advice is that the granting of a consent will probably lead to attempts to damage/destroy the arch, and thereafter to possible disorder.
- PSNI advice is that refusal of consent may lead to increased community tensions, within the loyalist communities of Portadown although whether or not this would manifest itself in public disorder is difficult to assess.
- This is a difficult call for Roads Service as erection of the arch will be offensive to some, and refusal of consent will be offensive to others.
- It is possible that even if consent is refused, the arch will be erected illegally, thereby antagonising both factions. However, this would be a matter, largely, for the police.
- The arch would not be an obstruction and does not infringe any rights to enjoyment of private property

The right to freedom of expression balanced against the concerns expressed by the PSNI (both in the event of a consent being given, and in the event of a consent being refused) and in the light of all the other factors outlined above leads to the conclusion that freedom of expression is not outweighed by other considerations. In relation to s75 the considerations above, and particularly the points that this is a very difficult situation in relation to the promotion of good community relations.

Summary of Consideration

The ultimate conclusion is that freedom of expression should prevail, and the consent be granted.

Line to take

Following consideration of the above, on balance, it is recommended that consent should issue.

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DIRECTOR OF NETWORK SERVICES.

04/07/02

The right to freedom of expression is a fundamental right protected by the ECHR (both in the context of a consent being given and in the event of a consent being refused), and in the light of the other factors outlined above leads to the conclusion that freedom of expression is not outweighed by other considerations. In relation to the considerations above, and particularly the points that there is a narrow margin in relation to the protection of good community relations.

[Signature]
Director of Network Services

As Mr. [Name] is on leave, he is being replaced by Mr. [Name] in the role of Director of Network Services. Mr. [Name] has been in contact with [Name] and has read the content of the [Name] report.

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HUMAN RIGHTS AND S75 CONSIDERATIONS

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 - Consents have been obtained over the last few years, and the lodge has complied with any conditions.
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 - Any complaints in the past relate to the granting of planning permission rather than human rights, or s 75 considerations - see letters from P.Drinan in 1999.
 - There has been trouble at the erection of the arch in the past , requiring a significant police presence when the arch is erected, and , eg in 1999 catapulting of ball-bearings by children. No serious injury has occurred.
 - PSNI advice is that the granting of a consent will probably lead to attempts to damage/destroy the arch, and thereafter to possible disorder.
 - PSNI advice is that refusal of consent may lead to increased community tensions, within the loyalist communities of Portadown although whether or not this would manifest itself in public disorder is difficult to assess.
 - This is a ^{difficult Court} ~~no-win situation~~ for Roads Service as erection of the arch will be offensive to some, and refusal of consent will be offensive to others.
 - It is possible that even if consent is refused, the arch will be erected illegally, thereby antagonising both factions. *However this would be a matter*
 - The arch would not be an obstruction and does not infringe any rights to enjoyment of private property *legally*
- note*
psni

The right to freedom of expression balanced against the concerns expressed by the PSNI (both in the event of a consent being given, and in the event of a consent being refused) , and in the light of all the other factors outlined above leads to the conclusion that freedom of expression is not outweighed by other considerations. In relation to s75 the considerations above, and particularly the points that this is a no-win situation in relation to the promotion of good community relations .

Fuller Consideration
Views of Director of Corporate Services

Although Jim Carlisle is on leave, he asked Gerry Anketell to 'keep him in the loop' so far this matter is concerned. Gerry has been in contact with him by phone and has read the content of Chief Inspector McCrum's letter to him.

Jim's thoughts on the issue were as follow:

- ✗ • There has been a tradition^{of} issuing consents in respect of this arch, at this location. Nothing ~~has~~ changed in terms of relevant circumstances this year. *of significance is behavior to have*
- If consent is refused, it may, as the police have pointed out, lead to increased tensions in the loyalist communities in Portadown. This may well be exacerbated by the fact that a decision not to issue consent, would follow so closely on the decision of the Parades Commission to disallow the Orange parade on the Garvaghy Road. Additionally, the loyalist communities are likely to see this as a further erosion of their traditional rights which would also fuel those tensions.
- On balance, Jim's view would be that the Department should be leaning more to a decision to issue consent, rather than refuse it.

Summary of Consideration

- a The ultimate conclusion is that freedom of expression should prevail, and the consent be granted.
- b [The ultimate conclusion is that there is a very fine balance, and that taking into account the concerns of PSNI, the consent should not be granted.]

Line to take

It is recommended that freedom of expression should prevail, since it has not been outweighed by other considerations. In that light, the consent should issue.

*after consultation of the above, on balance
it is recommended that consent should issue.*

**POLICE SERVICE OF NORTHERN IRELAND****POLICE SERVICE OF NORTHERN IRELAND****MAHON ROAD, PORTADOWN, CRAIGAVON
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Miss Anne McCleary
Department for Regional
Development
3rd Floor
Clarence Court
10-18 Adelaide Street
BELFAST BT2 8GB

Please reply to:

Ch/Inspector McCrum

Your reference:

Our reference:

Date:

3 July 2002

Dear Anne

Your correspondence dated 2 July 2002 in regard to the erection of the traditional arch at Parkmount/Victoria Terrace, Portadown, refers.

I believe that you now require an additional Police perspective on the possibility and level of disorder breaking out on the basis that consent be granted and then consideration of the same issue if consent was refused.

Firstly, if consent was granted I would suggest as in previous years there would definitely be concerted attempts by certain individuals from within the local Garvaghy Road community to destroy, damage and/or deface the arch. Clearly there is a possibility that in endeavouring to interfere with the arch disorder between rival groupings may well occur. This assertion is predicated on the events of previous years.

It is more difficult for Police to assess the possibility of disorder occurring if permission was not granted to erect the arch. This is largely because in the past permission has always been granted for the erection of the arch. It is my view, however that if permission was not granted for erection of the arch this may lead to increased community tensions within the Loyalist communities of Portadown. It is however very difficult to assess, with any degree of accuracy, whether these increased tensions would manifest themselves in the form of Public Disorder.

I trust these comments are of some further assistance to you.

Yours sincerely

ALAN McCRUM
Chief Inspector

McNally, Frank

From: Anketell, Gerry
Sent: 02 July 2002 09:52
To: Keenan, Joanne
Cc: McNally, Frank
Subject: Orange Arch - Garvaghy Road

Marion,

Anne McCleary is acting for Roads Service on this subject and has been liaising with Paul, Malcolm & Secretary etc. The attached letter is to issue by fax under Ann's signature on [Departmental paper](#) this morning (in Roads Service we don't have any!). Could you please do the needful urgently on headed paper and phone Anne on ext. 40580 when ready.

Many thanks, in anticipation.



Garvaghy Road,
Portadown.doc

Gerry Anketell

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