

11



DERRYHALE RESIDENTS' ASSOCIATION

RECEIVED
27 SEP 2005

*"Tara".
11a Brompton Park,
Derryhale,
PORTADOWN,
BT62 3SP.*

23 September 2005.

Robert Mackey Esq.
Planning Service Hq.,
3rd. Floor,
Millennium House,
17/25 Great Victoria Street,
BELFAST,
BT2 7BN.

Dear Mr. Mackey,

On behalf of the Derryhale Residents' Association I have pleasure to enclose our response to the **Draft Planning (EIA) (amendment) Regulations (NI) 2005 – Consultation Paper**. We trust that the Department will find our comments helpful.

May I ask you to note that we, as a group, have very limited access to information technology and would request that, any further papers to be issued on Planning Reform should be sent to the above address, as hard copy.

Thank you for the opportunity to respond to the Consultation Paper.

Yours sincerely,

John E. Galway (Doctor).
Chairman
Derryhale Residents' Association.

Chairman
Dr. JE Galway.

Vice Chairman
JP Kilner

Treasurer
Wm. Bryans

Joint Secretaries
Mrs D Kilner / Mrs S Sloan

Derryhale Residents' Association.
Response to
Draft Planning (EIA) Amendment Regulations (NI)
August 2005.

Introduction.

The Residents' Association acknowledges receipt of this consultation document, which is by nature very technical, and in many ways it is beyond the ability and scope of the Association to respond. Our response will be relatively brief and superficial.

This response is in part an attempt to make comment on the document but also, and of equal importance, to signify the Association's continued interest in planning matters. This interest will, we hope, ensure that the Derryhale Residents' Association will remain on a circulation list of Respondents to planning consultation and thereby avoid loss of continuity of communication. This unfortunately occurred in connection with the Public Consultation Paper on Reforming Planning issued in August 2004.

Communication.

In a democracy, good public communication is the basis of good government. In annex 2, the document refers to the **Directive 96/61/EC** and the addition of **Annex V – Public participation in decision making**. The first paragraph (1) refers to the means by which, the public are to be informed of relevant matters. "(by public notice or other appropriate means such as **electronic media** ---)".

One accepts that reliance on electronic means of communication is becoming progressively more common. Never the less, it is important to point out, that technical expertise in information technology is more likely to be found in the younger generation, say under 30 years. This same group is probably less likely to participate in public debate on matters of public concern; those matters on which, government purports to seek the public's views. In contrast, the older generation is more likely to have views on, and indeed experience of these very matters, but is less likely to use electronic means of communication to respond.

It is the view of the Residents' Committee, that communication by government departments with non-governmental organisations, such as residents groups, should be maintained by the same means as had been used in the initial response by that group. Any new publications, published in the continued consultation process, should be sent automatically to that group for further comment or advice.

In paragraph 5, examples of methods of local communication such as *bill* posting within a certain radius have been cited. In an earlier response by the Residents' Association, this method of advising the public of a local planning application had been advocated; it is used universally, with good effect, in the Irish Republic. The Department's response and acceptance of the suggestion was lukewarm to say the least. If it is good enough for Member States and is cited in annex 2 of the consultation document, as an acceptable method of public communication, is it possible for the Department to reconsider the earlier decision?

Planning Appeals missic

The intentions enunciated in Sect. 3.28 finds favour with the Association. The impact of such proposals, identified in Sect. 3.29 and 3.30 are welcome. Of concern is the content of Sect. 3.31 in which the document states, "These provisions are still under consideration and are not included in the draft regulations ----". The paragraph continues, "---- they will be finalised in due course **and included in the new regulations**". This appears to state, that they will be included without the public having had a chance to scrutinise the text and any nuances added. **This is not acceptable and does not provide accountability and transparency, so esteemed by ministers.**

In a similar way, Ms. Fleming's introductory letter refers to the Department's proposal to "---- include a number of additional changes to EIA procedures ----". It would have been helpful if these proposed changes had been specifically identified in the letter, rather than leave it to the reader to attempt to identify them from a complicated text; presumably at Sect. 3.9 and 3.10.

Draft Regulation 8b.

Section 3.9 and 3.10 appear to formalise the requirement to have any additional information, which is relevant to a particular application or appeal, published and removes the discretionary element from the matter. The Residents' Association supports this proposal in the interests of transparency.

Draft Regulation 9.

This is one of, if not the most unacceptable section of the entire document and indeed of all the proposals for change to the planning legislation in Northern Ireland. Section 3.13 is completely unacceptable to the Derryhale Residents and in all probability to the public in general. The Departmental "considered" view as expressed, is cavalier and complacent beyond belief.

Article 10a, which has been inserted in the European Directive, explicitly states "Member States shall ensure --- members of the public concerned --- (shall) have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive".

The penultimate paragraph of this section comprises a single sentence: "Any such procedure shall be fair, equitable, timely and not prohibitively expensive."

The injunction (Article 10a) is again repeated, almost word for word, as Article 15a – Access to Justice.

Previous public consultation has indicated a substantial response in favour of provision of a system of Third Party Appeals. The current minister, Angela Smith MP, who has no direct accountability to the people of Northern Ireland, has decided, contrary to the wishes of the general public who are currently disenfranchised, that such appeals are not to be allowed and the Department proposes to implement this decision. The Minister's decision has apparently been based on a wish to "---- speed up the planning decision making process in Northern Ireland - --"

The Minister, who presumably bases her decisions on the advice of her Civil Service advisors, has discounted the genuine and well-founded public concern to establish equality of rights between the Developer, who may lodge an appeal with the Commissioners and non-governmental bodies representing the general public, who are to be barred from making such an appeal.

This decision, in our collective view, has failed to demonstrate Government's stated objective; to involve the public in a genuine consultation process. In contrast, it represents a cynical disregard for the true intention of the Directive, by *cherry picking* the options **contained** therein.

Judicial review is open to members of the public, governmental, and non-governmental bodies. The cost of such a review would be prohibitive to all except a few affluent individuals. Governmental bodies such as District Councils will almost certainly take a not unreasonable view, that such a course of action could be perceived by officialdom, to be an unacceptable use of public funds and would consequently leave the council open to official castigation and possibly financial penalty.

In Sect. 2.56 of the Reforming Planning – Public Consultation Paper (pg.20) the Minister has relied on case law, which has (to date) accepted that “---- the planning process is human rights compliant;”

We have little doubt that the legality of this unfair and unreasonable draft legislation will be challenged in the European Courts, if it is implemented without amendment.

Third Party Appeals.

The Derryhale Residents recognise that third party appeals may be subject to abuse, and that this abuse may cause delay in the planning process. Abuse can easily be controlled by requiring an objector or group of objectors, initially to submit the appeal to a governmental body such as a District Council. The appeal would only proceed if the Council was persuaded that the case had merit. This alternative, or similar device, would greatly enhance public confidence in reforming planning in Northern Ireland, and **would indicate a wish by government, to implement the European Directive in the spirit and letter of the law.**

Continued Consultation.

As indicated in the section on communications, the Derryhale Residents' Association would wish to be kept informed of further developments by direct contact and continued correspondence with the Department. We do not wish to be deprived of the opportunity to continue to be involved in *Modernising the Planning Process* by omission, as occurred when the *Public Consultation Paper* (August 2004) was issued. This failure of communication has already been the subject of correspondence with David Ferguson Esq. Chief Executive Officer.