

From: Godfrey, Katrina (DAERA – Perm Sec)
To: Donnelly, Paul (DAERA)
Cc: Foster, Dave; Crowe, Richard; DAERA PermSec
Subject: From Julie Harrison DfI - REPORT NO: 13189 PLANNING ISSUES MOBUOY ROAD (PSDFI 3/23)
Date: 16 January 2023 17:28:42
Attachments: image004.png
PSDFI 3 23 - Margaret Kelly NIPS) - REPORT NO 13189 PLANNING ISSUES MOBUOY ROAD.pdf

Paul – with my thanks for clarifying everything at our end, please find attached the DfI reply.

Katrina

From: [REDACTED] <[REDACTED]> On Behalf Of Sec, Perm
Sent: 16 January 2023 17:10
To: [REDACTED]@nipso.org.uk>; Kelly, Margaret (NI Ombudsman)
<[REDACTED]>
Cc: NIPSO <[REDACTED]>; Godfrey, Katrina (DAERA – Perm Sec)
<[REDACTED]>; DAERA PermSec [REDACTED]; Sec, Perm
<[REDACTED]>
Subject: [Shall I share with PD for info? - AJ] From Julie Harrison DfI - REPORT NO: 13189
PLANNING ISSUES MOBUOY ROAD (PSDFI 3/23)

Please see attached from the Permanent Secretary.

Regards

[REDACTED]
PS/Dr Julie Harrison

[REDACTED]
Permanent Secretary's Office
Department for Infrastructure
Clarence Court, 10-18 Adelaide Street, Belfast, BT2 8GB
Email: [REDACTED]

From: [REDACTED] <[REDACTED]@nipso.org.uk>
Sent: 12 January 2023 16:03
To: Harrison, Julie (DfI – Perm Sec) <[REDACTED]>
Cc: [REDACTED] <[REDACTED]@infrastructure-ni.gov.uk>
Subject: Mobuoy Road

Dear Ms Harrison

Please find attached a letter and report from Margaret Kelly, Public Services Ombudsman for your attention.

Kind Regards

[REDACTED]
Executive Assistant to the Ombudsman and Deputy Ombudsman



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[REDACTED]



Department for

Infrastructure

An Roinn

Bonneagair

Department for

Infrastructure

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From the Permanent Secretary
Dr Julie Harrison

By email:

██████████@nipso.org.uk

Margaret Kelly
NI Public Services Ombudsman

Room 701
Clarence Court
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BELFAST
BT2 8GB
Telephone: ██████████
Email: ██████████@infrastructure-ni.gov.uk

Your reference:
Our reference: PSDFI 3/23
16 January 2023

Dear Ms Kelly

REPORT NO: 13189 PLANNING ISSUES MOBUOY ROAD

Thank you for your email of 12 January 2023 regarding the 2017 Ombudsman report in relation to issues at the Mobuoy Road site and your intention to publish a short summary of the report. I am mindful that this has been a very tight turnaround but nonetheless thought it important to respond.

I would make a number of points in particular before providing some additional information which may be of use. Firstly, it is important to understand that the then Department of the Environment (DOE) is not a predecessor of the Department for Infrastructure (DfI). DOE ceased to exist as part of the review of central government departments in 2016. While the regional strategic planning functions did move to DfI, the environmental responsibilities, including waste management, now sit with the Department of Agriculture, Environment and Rural Affairs (DAERA). I understand you have also written recently to Katrina Godfrey, DAERA Permanent Secretary, to whom I am copying this response. However, as this case related mainly to planning issues and processes it is appropriate the DfI responds in this instance.

The Ombudsman had previously recommended that DOE review its policy in relation to retrospective planning applications for mineral extraction and in previous correspondence it was noted, as part of DOE's assurances, that since the complaint arose, administrative and systemic improvements had been implemented in relation to the planning system. I set out below some useful information on significant changes brought about under the planning reform and transfer programme as well as subsequent actions taken forward by DfI.

Two-tier planning system

You will of course already be aware that as a result of the reform of the planning system, from April 2015 Northern Ireland returned to a two-tier planning system for the first time since the early 1970s, with the majority of planning powers transferring to local government and exercised by the 11 locally elected councils in Northern Ireland. The policy intention behind the Executive's decision was to enhance local democratic accountability for local planning decisions, by bringing local planning functions closer to local politicians and communities. Councils thereafter were responsible for the vast majority of planning decisions and responsible for planning enforcement. Councils take 99.9% of planning decisions and are responsible for all enforcement action in their areas.

New planning legislation

The key powers relating to the planning system are set out in the Planning Act (NI) 2011 and a broad range of supporting subordinate legislation which was the subject of extensive public consultation and scrutiny through the NI Assembly.

Consolidated planning policy and practice guidance

With the introduction of the Strategic Planning Policy Statement (SPPS) in September 2015, in line with the transfer of planning powers to local government, the existing Planning Policy Statement on enforcement (PPS9) was cancelled. The SPPS sets out the Department's regional planning policies for securing the orderly and consistent development of land in Northern Ireland under the reformed two-tier planning system. The provisions of the SPPS must be taken into account in the preparation of Local Development Plans and are also material to all decisions on individual planning applications and appeals. Planning enforcement is referred to at 5.54-5.58 within the SPPS and it highlights the importance of effective enforcement action in ensuring the credibility and integrity of the planning system. The changes reflected the move to a new two-tier planning system and the primary responsibility for councils in enforcing planning control in their own areas.

The Department published an *Overview of Planning Enforcement Responsibilities* and a series of associated enforcement practice notes (EPNs) as advice to the new councils and others involved in the planning system which reflect the legislative provisions stemming from the 2011 Planning Act. The Overview and EPN1 highlight the potential of minerals and waste development to significantly impact on the environment and stress the importance for planning authorities to comply with EU Directives and associated regulations. Indeed, the extant Planning (Environment Impact Assessment) Regulations (NI) 2017 were subsequently brought forward making specific reference to enforcement powers. Regulation 32 states that "the council or, as the case may be, the Department shall consider the exercise of their enforcement functions in such a way as to secure compliance with the objectives and requirements of the (EIA) Directive".

Revised guidance

In addition to changes on enforcement guidance set out above, my department has been progressing a range of activities under our Environmental Governance Work Programme (EGWP) for the planning system. This has included a strong focus on work to build competence and capacity in the area of environmental impact assessment (EIA) with all of our local planning authorities which has included specific guidance on the management of retrospective EIA development.

The EGWP includes work on developing a series of development management practice notes (DMPNs) on key elements of the EIA process. The first of these, DMPN 9A on the Management of Unauthorised EIA Development (central to the practice issues in the Mobuoy Road case), was published in December 2021 and is available at the following link:-

[Development Management Practice Note 9a: Unauthorised Environmental Impact Assessment \(EIA\) Development \(infrastructure-ni.gov.uk\)](https://infrastructure-ni.gov.uk/development-management-practice-note-9a-unauthorised-environmental-impact-assessment-eia-development)

DMPN 9A is practice guidance for planning authorities and is intended to draw together those principles from both existing legislation and both existing case law which govern the management, control and enforcement of unauthorised development. The practice note is intended to promote consistency in approach and use of planning enforcement powers that are conferred by the Planning Act (NI) 2011 and the EIA Regulations.

Chapter 7 of DMPN 9A makes specific reference to minerals and waste cases highlighting the potential for such development to have ongoing and lasting adverse effects on the environment. The DMPNs are intended to support sound environmental decision-making, primarily aimed at planning authorities but also to inform the understanding and practice of wider stakeholders including developers and their agents.

The EGWP has also involved the design and development of two levels of EIA training with an external EIA expert, informed by LPA input on key training requirements, which has been rolled out to planning staff across the two-tier system:

- Core EIA training module (1 day training course); and
- Advanced EIA training module (a follow on 2 day training course).

To date over 200 planning officers have undertaken this training.

Areas covered as part of the EIA training modules include:

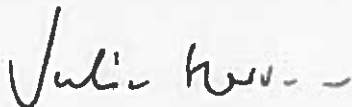
- Introduction, aims and developing a community of EIA practice;
- Effective EIA practice - understanding significance in screening and scoping;
- Delivering a compliant and effective screening opinion;
- Role and operation of Environment Officers Forum;

- Developing the Council's scoping opinion;
- EIA case law – improving knowledge;
- Examining environmental statement and information;
- Effective EIA practice - examining the environmental information;
- Review Environmental Statement sections;
- Stakeholder and Environmental Statement consultation - what does good look like; and
- Good practice around creating EIA mitigation and converting into conditions.

Both the Core and Advanced EIA training modules have been accredited by the Institute of Environmental Management and Assessment (IEMA).

I trust that this information is useful in understanding the extensive range of work which has been progressed both under the then DOE and also the work which the Department for Infrastructure continues to take forward.

Yours sincerely



JULIE HARRISON

Copy:
Katrina Godfrey, DAERA Permanent Secretary