

Input Into the Impending Bill of Rights

Lenadoon Community Forums response

In respect of an individual's rights in terms of the proposed environment section within the impending Bill, the Lenadoon Community Forum would contend there should be a numbers of issues taken into consideration.

Legislation should be consolidated to reflect and essentially dovetail Article6 (1) of the European Convention on Human Rights.

Schedule1 of the Human Rights Act 1998 states:

“In the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”

In terms of a fair hearing, it would be the contention of the forum that in order to realise the above, provisions should be made to ensure that all citizens could avail of appropriate legal expertise at public inquiries. Current parameters as regards access to counsel exclude certain members of the public thereby rendering residents defenceless when pitted against legal experts employed by departmental agencies.

It is also questionable how impartial a hearing is when a government department actually appoints the presiding commissioner. Furthermore, in certain cases the department has the power to disregard the recommendations of a commission as is the case in terms of Article 3 1 applications under The Planning (northern Ireland) Order 1991.

There is also some concern that when a commission reports to a department the public has no recourse to see this report until the department actually peruses it, makes amendments and announces its decision. In the interests of transparency and equality this area needs to be addressed and everyone should have the right to avail of the report at the same time as the department.

Under Article 6 it is also noted that “a reasonable time” is stated. Some planning applications that have been deemed “Article3 1” have been in the system for years. There needs to be a firming up of time-scales within the new bill to correspond with the ramifications of the Human Rights Act to make it incumbent on public bodies to make decisions in a timelier manner.

As everyone has the right to information, to participate and to complain about environmental decisions, the proposed bill should attempt to go beyond the provisions under the EU Directive 90/313/EC on all of the above. Measures should be put in place to ensure transparency and equality at all levels of the decision making process under the environmental umbrella.

Communities have the right to a sustainable environment and everyone should have the right to third party appeals. Currently only the applicant to a planning refusal can appeal a decision. There is no scope for an objector to appeal an approval – unlike the situation under the Republic of Ireland's planning legislation. This falls foul of inclusive Human Rights legislation for all and an area that should be addressed in the impending Bill on Rights.

As third parties are at present unable to appeal decisions that may contravene their rights, the only **available** recourse is to seek leave to apply for a judicial review. This process calls for discovery or disclosure of departmental documents and this right ties in with an individual's right to access all available environment information.

The Lenadoon Community Forum would be in agreement with the draft document on the Bill that everyone (including Travellers) has the right to adequate housing. That housing should be appropriate to the material, social and mobility needs of the person. Also everyone is entitled to secure establishment in his or her home. Limitations on secure establishment must be subject to fair legal process.

Affordability of housing in west Belfast is contentious at present with private developments often excluding local people from purchasing. The forum would therefore encourage legislation that would make it incumbent upon private developers to apportion part of their sites for social housing. Currently Southern Ireland has put in place legislation whereby 20% of sites of a certain size must go for social/affordable housing.

There also needs to be guaranteed access to public services. This is particularly pertinent given the **withdrawal** of public transport to North & West Belfast in recent times.

The ECHR (European Convention on Human Rights) also enshrines, Respect for private and family life and the protection of property. The Bill should therefore reflect these pre-affirmed rights.

Protection of our natural and built environment is important also. Protection of natural assets such as rivers, mountains and important historical buildings should be strengthened by robust legislation especially in terms of enforcement against those individuals and organisations that threaten the sustainability of such ecosystems and buildings. The current enforcement legislation needs to be considerably strengthened and used effectively by public bodies. Allied to this our courts also need to take environmental breaches more seriously by **fining** guilty perpetrators appropriately.

In NI, there is no legislation for the "spot listing" of buildings. The long timeframes involved often threaten the longevity of the building and this is a concern particularly in west Belfast where fine historical buildings have been irrevocably lost.

To date, the approach of the Convention Institutions, where an individual complains of the rights infringement in an environmental context, there is the need to balance the damage to the individual against the broader interests of the state. It therefore follows that quite substantial environmental catastrophes can be excused by overriding factors of public and State concern. This is problematic at present at local community level and perhaps the Bill could therefore look at ways of extending the rights of individuals in this arena.

There is the need to balance environmental issues with social and economic issues. Environmental issues are just as important and should be valued accordingly. They should be weighted as highly as economic. On this point, it is of note that within the Draft Bill, environment is incorporated within “social & economic” rights and is only really referred to under the housing umbrella. Unfortunately, this is a typical occurrence in Northern Ireland as our environment is often taken for granted. The new Bill could therefore take this opportunity to be bold in terms of environmental rights for all.

Allied to the above, **free** and ready access to environmental risk information is important in order that individuals can objectively assess potential health risks associated with environmental pollution, actual or anticipated.

In general, issues such as environmental protection, environmental quality, protection against environmental threats and access to information on environmental harm are all within the public interest and the Bill must stress the importance of these.

To sum up, it would be the contention of the forum that the above necessary legislation changes and amendments would go some way in setting limits to the powers of the *government* and public bodies in controlling **our** environment.