



Northern Ireland
Assembly

Committee for Regional Development

OFFICIAL REPORT (Hansard)

Inquiry into Unadopted Roads: Northern
Ireland Environment Agency

6 June 2012

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Members present for all or part of the proceedings:

Mr Pat Doherty (Deputy Chairperson)

Mr John Dallat

Mr Stewart Dickson

Mr Ross Hussey

Mrs Dolores Kelly

Mr Ian McCrea

Mr David McNarry

Mr Stephen Moutray

Witness:

Mr Mark Livingstone

Northern Ireland Environment Agency

The Deputy Chairperson: Mark, you are very welcome. After your presentation, we will have some questions for you.

Mr Mark Livingstone (Northern Ireland Environment Agency): Chair, if you are content, I will read out my presentation. Under the Water (Northern Ireland) Order 1999, the consent of the Department of the Environment (DOE) is required to discharge any trade or sewage effluent to any waterway or any water contained in underground strata. That includes effluent from any commercial, industrial or domestic premises. The focus of my presentation is to highlight issues with the discharge of sewage effluent from private waste water treatment systems and pumping stations in the current financial climate.

I will give a bit of background. Private waste water treatment systems are required to treat sewage from industry, private housing developments and single dwellings that are unable to connect to the sewerage infrastructure provided by Northern Ireland Water (NIW). Pumping stations may also be required to pump sewage from new housing developments to the main Northern Ireland Water sewer system. That may not be possible in rural developments.

A developer is usually named as the consent holder and is responsible for the maintenance and operation of the waste water treatment system or pumping station. That includes ensuring that the conditions of the consent are met; ensuring that the system is operational; paying for the electricity supply; maintaining the systems; and responding to telemetry or any problems or faults in the event of a power failure. A developer may approach Northern Ireland Water to adopt those systems if they are designed and operated to Northern Ireland Water standards. A number of systems have already been adopted by Northern Ireland Water.

I will highlight a growing problem that the Northern Ireland Environment Agency (NIEA) faces. In many cases, if a developer goes bankrupt, the systems are no longer maintained and cease to operate effectively, thereby failing to meet the obligations of the consent. For a failing pumping station, that means that the sewage produced by the householders is no longer pumped to the sewer, which overflows via an emergency overflow, causing pollution. For a waste water treatment system, it can also result in an overflow of sewage into local watercourses and onto roads and eventually, over the long term, in blockages throughout estates and private dwellings.

Once something is reported as a pollution incident, the Northern Ireland Environment Agency may instigate enforcement proceedings against the consent holder. If the consent holder is no longer in business or cannot be traced, the NIEA is left to pursue the householders — the people making discharge — to ensure that the systems are maintained. That is a bit unfair. Householders are very often reluctant to assume that responsibility, and, in many cases, Northern Ireland Water is asked to adopt those assets. If the systems do not meet NIW's standards, it is likely to refuse adoption until the systems can be brought up to the required standard. That can be difficult to achieve for private householders.

A number of private systems throughout Northern Ireland are no longer being maintained because the NIEA is unable to contact the consent holder. In many cases, householders are unwilling or financially unable to carry out the necessary improvements to meet the Northern Ireland Water standards to allow adoption. Those people view Northern Ireland Water as the organisation responsible for running those assets and believe that developers' bonds cover such scenarios.

I will cite two examples, but there are many. We are dealing with about a dozen typical examples throughout Northern Ireland. The NIEA recently investigated a private pumping station at Loughadian Brae in Poyntzpass. The owners of the five houses appear at their wits' end, having been passed from pillar to post while trying to resolve the matter. The pumping station seems to be subsiding as the sewage level never rises in the wet well, which is part of the pumping station, and is not being pumped away to the main sewer. There are no working pumps or telemetry, and the developer cannot be traced. The householders have contacted an engineering company and been told that the cost of the corrective measures needed to bring the pumping station up to a Northern Ireland Water standard is in the region of £40,000. As the pumping station serves only five houses, it would be unreasonable to expect the householders to pay that amount. The NIEA understands that Northern Ireland Water is not resourced to correct the issues.

A second example is a private waste water treatment system serving a housing development in Garrison, in which 10 houses have been sold, 10 houses have been partially constructed, and 36 sites are undeveloped. On 23 April 2012, the NIEA became aware that the electricity supply to the waste water treatment works had been disconnected. Power NI explained that invoices had been unpaid for approximately 18 months, amounting to a bill of some £18,000. That caused a fundamental failure of the works, which is currently filling with sewage and threatening to overflow and cause problems with sewage in the houses. The NIEA recently met the residents, Power NI and the bank's administrator to try to develop a pragmatic solution. That is ongoing and includes attempts by the NIEA to get the bank to take control of the waste water treatment works until the issues can be resolved. Again, the residents are impacted by their inability to get assistance to resolve the matter.

Departmental legal advice, unfortunately, is that, under the Water (Northern Ireland) Order 1999, if no one can be identified as being responsible for the consent, the individuals — the residents — can be held responsible for the sewage originating from their property. The situation arises, therefore, that the NIEA will legally hold the remaining householders liable for any impact on the environment and the legal requirement to manage any discharges.

The Deputy Chairperson: Before I bring members in, will you explain the circumstances in which a private housing development might not be able to connect to a sewerage infrastructure maintained by NIW?

Mr Livingstone: There are many reasons. The development may be too far away or in a rural location that cannot be accessed by a Northern Ireland Water asset, because its pumping stations or sewage treatment works are generally built near towns or in semi-rural areas in which the number of houses can sustain that. The reason why developers will then provide a waste water treatment system or a pumping station to take sewage to a Northern Ireland Water asset is that they have obtained planning permission to build five, 10, 15 or 20 houses and are required to provide sewage treatment. When developers provide sewage treatment, they are required to have a consent to

discharge. The consent to discharge is to allow treated sewage waste to be pumped into our watercourses at a certain standard so that they are protected.

Mrs D Kelly: Thank you, Mark, for coming in and giving your presentation. I understand that you are on leave. Members might remember that I raised the issue of Loughadian Brae, where householders have been left in dire straits. You said that the developer cannot be traced. How is it that a developer cannot be traced when there are so many ways to trace people these days? We are all only a number. A number is attached to each of us, whether it be a social security number, national insurance or VAT registration.

Mr Livingstone: We have been dealing with the issue since 23 April 2012, which is not so long ago, and we have not had the proper opportunity to trace the developer. On many occasions, a developer will form a company, which may or may not be registered properly. When developers go bankrupt or bust, they move on and leave that company as a shell, and it becomes very difficult to trace them. There have been examples of when we have traced a developer, who has gone bankrupt in any case, so he is held unaccountable for us to help the residents. The agency feels fairly powerless, because all we are doing, in legal terms, is chasing people. We are trying to take a pragmatic approach to resolving such issues.

Mrs D Kelly: The resolution will be financially driven. Somebody has to pay, and surely it is an injustice that the householders, who are probably already living in negative equity, are going to have to pick up the bill, never mind having to live with the public health problem because a pumping station is not working. Departments have different responsibilities, so have representatives met to tackle the issue collaboratively? Whose responsibility would it be to ask NIW to pick up the tab for the completion of the works?

Mr Livingstone: I support that approach. We have been working with the Department for Regional Development (DRD) on the bonds issue, which has not come to the fore because, previously, we had not faced such problems. I am keen that the NIEA, through the Department of the Environment, continues to work with DRD to develop a bonds-type solution to the problem, so that someone either has insurance or money up front to pay when things go wrong.

Mr Dickson: It is a complicated situation, and I appreciate the difficulty with tracing owners from time to time. It is absolutely unfair on householders and, arguably, unfair on Northern Ireland Water.

The bottom line is that the Planning Service gave consent, and that is where the buck stops. At the height of the market, it came under pressure from developers or local councillors — some of us around this table know about such situations — to encourage planners to give consent to certain developments. The Planning Service should pay, and it should be working with you. I want to seek an absolute assurance that the Planning Service is working collaboratively and co-operatively and is not simply wiping its hands and saying that it is up to Northern Ireland Water to resolve the issue. Untreated water is ending up in watercourses, which is the worst situation of all.

Mr Livingstone: This is the first chance that I have had to promote that idea through a Committee. It has not even been raised at departmental level as yet. The issue has been pushed up by senior management and is gathering a lot of pace. My concern is that there are currently three, four or five such scenarios. At what stage will there be 20? That would be a problem. I will take back to my Minister the fact that the Committee raised the issue, and we will take it forward with the Planning Service.

Mr Hussey: Thank you for coming before the Committee. I have written down "environmental time bomb". Corrective measures could cost £40,000, so five householders could have to pay £8,000 each. If they do not pay, the Environment Agency will become involved because there are illegal discharges. It is a vicious circle that we cannot square.

I agree with Stewart: the Planning Service gives permission to build houses. You mentioned the Garrison site on which some houses have been built, some have not been built, and some in a state of preparation for building. The phrase "buyer beware" comes to mind. A lot of things come to mind, but we do not seem to be getting anywhere. The bonds issue must be reviewed, and I am very much of the opinion that not one black penny of a bond should be returned to a developer until a site is finished. There are partial payments, but I think that it should be the full value of the bond, and nothing should be released until the work is finished. In such situations in which a solution is up in the air, is there any hope for these people other than putting their hands into their own pockets?

Mr Livingstone: Much depends on who owns and who has funded the site. There is a site at Cookstown, for example, on which a developer was supposed to build 20 houses but ended up building 10 and had not connected into any sewerage system whatsoever; the sewage was running out into a huge hold that had been dug out the back. The bank has held up its hand and said that it should have been tighter in maintaining the finance for the site, so it is going to build a waste water treatment works. That will cost £100,000. It has taken about six months of work between various agencies to get the bank to agree to that, and in the meantime, the householders have been at their wits' end, trying to deal with the situation. Each site is built in a different way and has its own characteristics.

Mr Hussey: A structured approach is required so that all sites are dealt with in the same way. At home, we diverted a sewer slightly, and half of Tyrone was watching what was going on. There were complete checks on this, that and the other to make sure that the right pipe went where it was supposed to go. People buy sites in good faith, so we need a system to ensure that developments are up to standard. If a developer disappears and a bank owns part of a site, that bank should be held responsible.

Mr McNarry: Thank you for coming before the Committee. Have you considered whether there is recourse in law for compensation from a Department for house purchasers?

Mr Livingstone: I have not seen anything that highlights the fact that the Department might be culpable for anything. I am not overly familiar with planning law or with how determinations are made by the Planning Service, but you can get a feeling for that anecdotally.

I have had a similar experience in Donegal. My wife is from Donegal, and we have a house in Dunfanaghy that was left half-built. Ultimately, it was left to the householders to deal with the issue; the council had no interest whatsoever. Indeed, the bond did not exist when we tried to draw it down, because it turns out that it is an insurance-type bond as opposed to one that holds money. The bond system is probably similar in Northern Ireland, and I am trying to research the issue.

Mr McNarry: I only asked whether we might look at the issue further down the line because there are so many links with various bodies. I am anxious that constituents feel let down by the solicitors with whom they dealt, whether fairly or unfairly — I am not too sure. If all the required checks and balances had been put in front of prospective buyers, they might have acted as a warning sign. I am not saying that anybody could have envisaged what would happen, but at some stage householders or purchasers will look for recourse because they have run out of other avenues. I wonder whether there will be a test case.

When I said "a Department", I did not mean a particular Department, because they all may or may not be culpable in one way or another. Only the law will be able to prove that, unless the situation is sorted out. That may happen only if people are not facilitated. Is it your instinct that, in the end, people will be facilitated and the problem will be rectified, irrespective of who pays for it?

Mr Livingstone: My instinct is that it will be rectified in a different manner. My concern, living in Northern Ireland, is about the pressure that it will put on an individual householder and the length of time that it will take. Four or five Departments are working away to try to resolve a fairly big issue, but there could be problems for a single householder with a septic tank, which is a fairly small issue. That householder will have to resort to paying legal bills to take a solicitor to court for not doing his or her work properly, and the individual may not have the money to do that. That is the issue.

Mr McNarry: Will they get legal aid?

Mr Livingstone: I could not comment on that, but I assume that they would.

Mr Dallat: A few years ago, a rather interesting case involving Building Control went all the way to the House of Lords. The case was taken by someone living in Kilrea whose house began to fall. The decision was that Building Control, by being involved in inspecting the foundations, and so on, had assumed responsibility. That is how the case was eventually resolved.

It seems that the law is applied inconsistently, in that the Environment Agency and the Planning Service, which collect fees and take on responsibilities — the same applies to the legal profession, of

course — walk away from the problem. I am sorry that I missed your presentation, Mark, but somewhere in that circle of people who collect fees or money must lie responsibility for not delivering what a consumer was promised. It is fine to say that the issue will be resolved ultimately. I heard your comments about Dunfanaghy. I was in Donegal at the weekend, and I was in Dunfanaghy. I saw the mess, and it is not just in Dunfanaghy; it is everywhere. Surely Departments that provide the service, and let people down, must at some stage bear some responsibility for what has happened.

Mr Livingstone: I suppose that I am here today to raise that issue, so that we can get some momentum to develop an executive and Northern Ireland approach to resolving it. It is twofold: one, we need to stop it happening in the future; and two, we need to develop solutions for the people who are currently in a mess.

Mr McNarry: Good luck.

The Deputy Chairperson: Mark, we have no further questions. I appreciate your coming in at short notice to give us a briefing.

Mr Livingstone: Thank you.