Northern Ireland Assembly

Committee for Regional Development

OFFICIAL REPORT (Hansard)

Inquiry into Unadopted Roads: Building Control Northern Ireland

2 May 2012

NORTHERN IRELAND ASSEMBLY

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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 Seán Lynch
Mr David McNarry

Witnesses:

Mr Jonathan Hayes	Building Control Northern Ireland
Mr Ken Hunter	Building Control Northern Ireland
Mr Trevor Martin	Building Control Northern Ireland
Mr Ian Wilson	Building Control Northern Ireland

The Deputy Chairperson: I welcome Trevor, Jonathan and Ian. Please give your evidence, and, hopefully, our members will ask good questions.

Mr Jonathan Hayes (Building Control Northern Ireland): Thank you, Deputy Chairperson and members. The Building Control Northern Ireland executive committee welcomes the opportunity to provide a response to the current inquiry into unadopted roads. As representatives of councils, we are aware of other key issues in councils where this issue has other major implications; for example, waste collection, street cleansing and property conveyancing. As outlined in the terms of reference, a number of areas have been identified in which the Department is unable to adopt a road. One area identified relates to public sewers, both foul and storm. Our response will deal, in the main, with those issues.

Currently, under the Water and Sewerage Services (Northern Ireland) Order 2006, a developer can choose or choose not to submit an application to Northern Ireland Water stating an intention for future adoption by Northern Ireland Water. That is, the developer enters into what is known as an article 1(6)(1) agreement with Northern Ireland Water to have the sewers adopted after completion of the development. A monetary bond is lodged by the developer, and Northern Ireland Water then has a duty to inspect the works as they progress on site. In the main, that arrangement works satisfactorily, unless the developer goes into administration. The complexities that then arise depend on what stage the sewers have been developed to. In a number of cases across Northern Ireland, several developers have chosen not to submit an application to Northern Ireland Water for the future adoption of sewers.

As a consequence, those sewerage installations are not subject to the specification requirements of Northern Ireland Water and are installed without Northern Ireland Water inspection.

Currently, local authority building control undertakes inspections of underground foul and storm drainage. However, the primary focus of such inspections is placed on sewerage lines laid within the curtilage of the individual dwelling sites. As the installation for the trunk sewers within a development is normally located within the roads, that work is usually completed prior to the commencement of building control inspections on the construction of the actual unit in the development. Where the sewers are adopted, Northern Ireland Water then has a statutory responsibility to maintain those public sewers. However, homeowners with unadopted sewers and the associated pumping stations, for example, are responsible for the maintenance and any associated costs. Unfortunately, many homeowners and businesses are unaware that they are legally and jointly responsible and face the costs of maintenance, including blockages, collapses, infestation by tree roots and maintenance of pumping stations.
Homeowners, businesses and developers can apply to Northern Ireland Water under article 1(5)(9) to have the sewerage system adopted retrospectively. However, Northern Ireland water may refuse to adopt the sewerage system if it believes it has not been correctly constructed and maintained.

In England and Wales, local authorities, homeowners and businesses had similar problems to those I have highlighted. I refer the Committee to two papers. The first is an independent research paper published by OFWAT, the Water Services Regulation Authority, in 2002. This paper confirmed the widespread ignorance of homeowners and businesses with regard to their responsibilities for the pipework serving their property, including private sewers and drains. In November 2001, the Department for Environment, Food and Rural Affairs (DEFRA) contracted W S Atkins to undertake independent research into the extent of private sewers. In 2003, DEFRA published a consultation paper that summarised the findings of the research and sought views on possible solutions for dealing with the problems identified. In England and Wales, after a number of consultations, the previous Government announced that approximately 300,000 kilometres of privately owned sewers in England would be transferred to water and sewerage companies from 1 October 2011. It also announced the introduction of a mandatory build standard for new sewers, and that those would automatically be the responsibility of the water and sewerage companies. The present coalition Government decided to continue with the transfer of private sewers, and the necessary regulations came into force on 1 July 2011. The ownership of private sewers, and the associated responsibility of such, transferred on 1 October 2011. That transfer provides a solution to a range of private sewerage and drainage problems affecting householders and businesses, including a lack of awareness of responsibility and an unwillingness or inability to co-ordinate or contribute to the potentially high costs of maintenance and repair. Transfer will also significantly help address a lack of integrated management of the sewerage network as a whole. This, in turn, will provide much greater efficiency of effort, environmental stewardship and expenditure of time; when the climate change impacts, the housing growth may impose greater demands on the drainage systems.

Having a greater proportion of the sewerage network under the management of the water and sewerage companies means that they will be able to plan maintenance and sewer baiting and resolve problems more easily and comprehensively. Building Control Northern Ireland asks the Committee to review the House of Commons paper SNSC-015114, entitled 'Private Sewers', published on 27 September 2010, and consider the benefits that would result from adopting the same position for the future in Northern Ireland, which would reflect current practice in England and Wales.

That concludes our presentation. We are happy to take questions.

The Deputy Chairperson: I will lead off. You mentioned that many homeowners and businesses are unaware of the legal responsibility for the maintenance of sewers. Are you saying that they are not being properly legally advised?

Mr Hayes: Certainly, in our experience, it is well documented that there are a number of unadopted roads across Northern Ireland and, when there are potential issues, the people involved are not always aware whether the sewers are adopted or unadopted. There are cases in which people are not aware that sewers have not been adopted.

The Deputy Chairperson: Is it the lawyers' responsibility to make them aware?

Mr Hayes: That I cannot answer. However, I do know that we are contacted to provide clarity in relation to the issue. People are not always aware that sewers are unadopted.

Mr Hussey: If we were to follow the line and adopt private sewers, do you have any idea how many kilometres or metres we are talking about?

Mr Hayes: I could not answer that. It could relate to the number of roads and houses that that would affect. It could be calculated.

Mr Hussey: It would be possible to calculate?

Mr Hayes: I suspect that the Department for Regional Development (DRD) could provide a tentative figure.

Mr Dallat: Thank you very much for your presentation. I tend to always take seriously any advice I get from building control. I want to ask this question: in the wider dimension of European regulations and so on, am I right in assuming that, sometime in the future, there will be an infraction in relation not just to the unadopted sewers but the septic tanks and all the rest of it? Do we need to be addressing that?

Mr Ken Hunter (Building Control Northern Ireland): It is my understanding, Mr Dallat, that, in Europe, building control would issue a notice of occupancy — as far as I know, that is what it is called. That lists the fact that certain statutory systems are in place — sewerage systems, water systems, etc — so that the owner or occupier is made aware those things are in place and to a satisfactory standard. That is general throughout Europe.

Mr Dallat: Should we be looking seriously at that?

Mr Hayes: Yes. Building control is on site at the completion stage, and that is where we believe it can add value and provide some comfort to homeowners. In relation to your first question about whether homeowners are aware of unadopted sewers, we would certainly be able to answer that if the same sort of system were brought in.

Mr Dallat: Very briefly, it has been my experience over many years in local government that building control has always been a reliable vehicle. We are very lucky and blessed in Northern Ireland to have good building control. I would certainly take any advice it gives us extremely seriously, because I have never found it to be at fault.

Mr McNarry: You are in a warm house now, John, after that comment. *[Laughter.]* I concur with it all the same.

At what stage would a prospective house purchaser know whether article 1(5)(9) application had been successful? Is it a case of putting the cart before the horse?

Mr Ian Wilson (Building Control Northern Ireland): From a conveyancing procedure point of view, local authorities have been engaged for a long time in looking at the areas where we are responsible for inspection and at where that inspection starts and finishes. My colleague Trevor will probably speak about the current legislation on that. Property conveyancing comes in to local authorities at various stages . Sometimes it comes in at a very early stage in the conveyancing process, and sometimes it comes in at a very late stage. From a local authority point of view, it is my understanding that we had been engaged with the Council of Mortgage Lenders and the non-contentious committee of the Law Society in relation to getting a common property certificate. We engaged with them, I think, 10 years ago, in 2002, when there were six slightly different property certificates across local authorities. We engaged with the Law Society's non-contentious committee to bring that all together, so that we have a common property certificate for the 26 councils.

My understanding is that the Council of Mortgage Lenders — I think that our colleagues who gave evidence before us said this — source a property certificate from a local authority on every new dwelling that is completed. I accept what it says. I do not have the evidence to say that a property certificate is sourced for all properties that go through local authorities. However, we could certainly try to check that out in order to give Committee members some sort of confidence that that is the case.

It is our understanding, from what the Council of Mortgage Lenders says, that there is different legislation in England that says that practitioners in conveyancing should make an application in every case. I am not sure whether that is the case in Northern Ireland, and I am not saying that it is not the case. However, I think that there is work for us to do on that. We recently engaged again with the Law Society to look at property certificates, based on what has happened in the past number of months in relation to the collapse of the construction industry. My colleague Trevor will take you through the current legislation and where we are, as that might add a little bit more to the debate for members.

Mr Trevor Martin (Building Control Northern Ireland): There is a situation that members need to be aware of. If a developer submits a road bond, that is obviously covered by DRD and Northern Ireland Water. However, some time ago, a change was made to the building regulations whereby there was an option either to submit or not to submit a bond as the case may be. That change came through in, we think, 1996. The interesting thing is that the change went through virtually unnoticed by us, and we have to hold our hands up here and say that we did not see it coming through. However, what I would say is that the circumstances in which it was introduced possibly led to that.

I have been in building control for 30 years and was chairman of the Northern Ireland building regulation advisory committee for six of those years. We were appointed by the Minister to advise the Department. When the change was made in 1996, it was done so without any fanfare or consultation whatsoever. That is highly unusual, because any change to building regulations is usually flagged up. We are usually made aware of such changes so that we have a chance to consult on, discuss and amend them. When this came through and was highlighted to the local authorities, it came as a major shock to learn that there are some instances in Northern Ireland at the minute of unadopted roads where a bond has not been paid, where building regulations may have, in fact, been applied and where we should have been inspecting the sewers but have not done so. I do not know how many there are, but I assume that there are a certain number in all council areas.

The other reason why I said that it came as a bit of a shock to us is that the concept of building regulations is to do with the building within the curtilage of a site. We would have inspected all the drainage within the curtilage of the site and the building itself but not the main sewer. The main sewer and the main road would have been seen as civil-engineering works and, therefore, outside the scope. So, we were quite shocked to find out that those sewers came in. I think that it would be remiss of us not to alert the Committee to that.

I think that the Committee is taking evidence from the Department of Finance and Personnel. If it is doing so, it might be worthwhile asking it when the legislation came in and what the intent behind it was. I think that a similar thing happened in England and Wales, and that led them down that route. As Jonathan said, they have now tried to, in a sense, retract that and get back to a situation where the water companies are solely responsible for it and where there is a clear dividing line so that building regulations and local authority building controls deal with buildings and their confines, and sewerage and road works are seen as civil engineering and are dealt with on that basis. So, there is slight confusion on that.

In relation to the second question that Ian was answering about trying to line up all the ducks before a purchaser buys, I think that that is absolutely essential. I think that there are occasions when all the ducks are not lined up before a house is conveyed. The problem is that when you go to the Law Society and try to explain that we are better at getting every single thing lined up before a purchaser buys, the Law Society and the mortgage companies will often tell you that people cannot wait that long; they are keen to buy. That was especially the case during the housing boom, when people were doing virtually anything to get on the market. To say that that would have been a retrograde step may be wrong; I do not think people would have accepted it. People bought at the height of the boom without having all the knowledge at that point in time.

Mr McNarry: I have one more question. How crucial are septic tanks and developer-installed pumping stations to non-adopted roads?

Mr Hunter: It actually goes beyond pumping stations. You can have a situation where a small development has to be serviced by a mini-sewerage-treatment works. In many, cases no article 1(6)(1) agreement is entered into, and there is a strong possibility that a 1(5)(9) agreement will not be entered into retrospectively. In those cases, the normal procedure is that a management company is set up, and the owners of the houses are put in charge of paying for charges through the management company. That is all very well until they realise that major works are required, and those people may suddenly be faced with exorbitant bills either to do some replacement work to the pumping station or to do something to a mini-sewerage-treatment works. That situation exists. As long as people are made aware of that when they purchase, it is an asset. However, I am sure that there are cases where people have not been made aware of that.

Mr McNarry: Are there any instances of those types of management committees getting involved in the provision of a road?

Mr Hunter: Not to my understanding.

Mr Hayes: I am aware of cases in my council area, where a development under construction is up to a suitable level for occupation, but the people in the properties are not aware that the pumping station has not been adopted. In one instance, where the builder left the site because the company went into liquidation and an article 1(6)(1) agreement had not been entered into, the property owners were not made aware that there should be a management company, and as a result, there was no management company. The developer had been doing construction on the development, but there was a breakdown in communication about what the owners of the properties believed they were responsible for.

Mr I Wilson: In relation to an earlier question, for clarity, local authorities have pump-primed their application form in the past six months. At the point of application, we now ask whether it is the intention of the developer, homeowner or builder to apply for an article 1(6)(1) agreement. So, local authorities have changed the application. I think that that happened six months ago. So, we are bringing it to the table very early.
My colleague has just reminded me that it is an offence under the building regulations to give a misleading statement to a local authority. So, if a developer or builder were to put in an application form that it is his or her intention to apply for an article 1(6)(1) agreement and then did not bother doing so, the local authority could take enforcement action should it need to. As my colleague Trevor said, this came in very silently, and local authorities were unaware of it. However, we are taking proactive action to try to bring it up front for people.

The Deputy Chairperson: Thank you very much for your presentation, Jonathan, Ian, Ken and Trevor. The advice was very practical.