

Regional Development Committee

Inquiry into Unadopted Roads in Northern Ireland

**Together with the Minutes of Proceedings of the Committee
relating to the Report and the Minutes of Evidence**

**Ordered by the Regional Development Committee to be printed 7th November 2012
Report: NIA 44/11-15 (Regional Development Committee)**

**REPORT EMBARGOED
UNTIL COMMENCEMENT OF THE
DEBATE IN PLENARY**

Membership and Powers

Powers

The Committee for Regional Development is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Regional Development and has a role in the initiation of legislation. The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of 5.

The Committee has power:

- to consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
- to approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
- to call for persons and papers;
- to initiate enquiries and make reports; and
- to consider and advise on matters brought to the Committee by the Minister of Regional Development.

Membership

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows

- Mr Jimmy Spratt MLA (Chairperson)
- Mr Sean Lynch MLA (Deputy Chairperson) ⁶
- Mr Alex Easton ⁸
- Mr John Dallat ⁵
- Mr Stewart Dickson MLA ¹
- Mr Ross Hussey MLA ⁴
- Mrs Dolores Kelly MLA
- Mr Declan McAleer ⁷
- Mr Ian McCrea MLA
- Mr David McNarry MLA ^{2,3}
- Mr Cathal Ó hOisín MLA

1 With effect from 06 June 2011 Mr Stewart Dickson replaced Mr Trevor Lunn
 2 With effect from 26 September 2011 Mr Michael Copeland replaced Mr Mike Nesbitt
 3 With effect from 06 February 2012 Mr David McNarry replaced Mr Michael Copeland
 4 With effect from 23 April 2012 Mr Ross Hussey replaced Mr Roy Beggs
 5 With effect from 23 April 2012 Mr John Dallat replaced Mr Joe Byrne
 6 With effect from 02 July 2012 Mr Seán Lynch replaced Mr Pat Doherty as Deputy Chairperson
 7 With effect from 10 September 2012 Mr Declan McAleer was appointed as a Member
 8 With effect from 01 October 2012 Mr Alex Easton replaced Mr Stephen Moutray

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List of Abbreviations and Acronyms used in this Report

CEF	Construction Employers Federation
CRD	Committee for Regional Development
DRD	Department for Regional Development
EU	European Union
GB	Great Britain
MLA	Member of the Legislative Assembly
NHBC	National House Building Council
NIEA	Northern Ireland Environment Agency
NILGA	Northern Ireland Local Government Association
NIW	Northern Ireland Water

Executive Summary

1. The Committee for Regional Development (the Committee/CRD) received a presentation on the increasing numbers of unadopted roads in Northern Ireland from the Northern Ireland Local Government Association (NILGA) on 18 January 2012. Following this presentation, the Committee agreed to undertake an Inquiry into Unadopted Roads
2. During the course of the inquiry, the Committee were advised that there were anything between 1,200 and 3,500 unadopted roads and some 1,200 sewerage schemes in backlog. DRD and NIW are unable to quantify the precise numbers which the Committee believes to be a significant weakness in itself. Recommendations to negate this weakness have been made and are detailed later in this report.
3. It was estimated that it would take some £300 million to bring roads up to a standard sufficient to allow for adoption and somewhere in the range of £41 million and £100 million to allow for adoption of sewerage and waste water schemes. As could be expected in today's economic climate, it is extremely unlikely that these levels of investment can be acquired from central government. However, the Committee is not suggesting that actions cannot be taken to rectify this significant problem but rather a coordinated effort by all sectors involved in the process could see major improvements in the most critical cases.
4. The Committee believes that there are a number of factors that need to be addressed, firstly, to prevent additional numbers being added to the list and, secondly, to significantly reduce the backlogs currently being experienced. These include a review of the main statutory instruments. The Committee agrees that the Private Streets (Northern Ireland) Order 1980 and the Private Streets (Amendment) (Northern Ireland) 1992 are outdated and require amending to both update them and to ensure that they offer protection to consumers and that they are adequate to address the issues surrounding unfinished developments and roads.
5. In addition, the Committee is extremely concerned that there is no mandatory requirement in the Water and Sewerage Services (Order) 2006 for a developer to submit a drainage plan to Building Control or to even enter into an agreement with NIW in respect of a bond. The Committee considers these to be major flaws that need redressing urgently.
6. In addition to the above, the Committee has made a number of other recommendations which it believes will benefit all stakeholders involved in this process. These include:
 - The bond limit and earlier release of bonded capital works where the work is incomplete within a prescribed period;
 - Prioritisation of unadopted roads and sewers where risks to public health and safety arise;
 - Enhancement of the property certificate to offer greater protection in the case of reselling of properties;
 - Establishing necessary codes of practice, protocols and guidelines for vendors and/or residents in developments where roads or sewers remain unadopted. These should include what questions the legal profession should be asking on vendors/residents behalf and a mechanism whereby those members of the public impacted by unfinished developments can trigger enforcement;
 - Establishment of a proactive forum to coordinate the addressing of the risks associated with actual and potential unfinished roads and sewers.
7. The Committee believes that the recommendations made within the report are proactive and has avoided attributing blame. The Committee would hope that this collectively responsible approach will be received and echoed by all stakeholders in this process.

Introduction

8. At its meeting on 18 January 2012, the Northern Ireland Assembly's Committee for Regional Development agreed to commence an inquiry into Un-adopted Roads in Northern Ireland.
9. For the purposes of this inquiry, an un-adopted road was defined as:
 - One where a street planning function has been exercised, a bond has been placed under the Private Streets (NI) Order 1980 and the Department is not satisfied that the street has been sewered, levelled, paved, channelled, made good and lighted.
10. The Terms of Reference for the Report were agreed as follows:
 - To identify the extent, types, distance and costs of bringing unadopted roads to a level where the Department is content to adopt;
 - To define the current processes required to ensure that undeveloped roads are constructed to a standard that allows for statutory adoption by the Department;
 - To identify the key stakeholders in the above processes and all statutory and other processes and responsibilities they have accountability for;
 - To review the legislative processes in place within Northern Ireland to ensure that it meets with all EU and other jurisdictional and policy requirements; and
 - To benchmark the Northern Ireland legislative processes against those currently in place in the UK and the Republic of Ireland
11. On 2 February 2012, the Committee inserted signposts in the Belfast Telegraph, Irish News and News Letter seeking written evidence on the Inquiry by 16 March 2012. The Committee also wrote to key stakeholders with the same request.
12. On 7 February 2012, during a debate in the Chamber of the NI Assembly, the Minister for Regional Development made the following statement:

"I recognise the concerns of local homeowners who find themselves in new housing developments, where developers have left roads and sewerage systems unfinished. Roads Service and NI Water are making use of the current legislation and procedures to address these problems but this process takes time to complete. I will ensure Roads Service and NI Water officials are available to the Committee throughout their inquiry process."
13. During the period covered by this Report, the Committee considered written submissions from in excess of 25 organisations and two further submissions by MLAs. A copy of the submissions received is included at Appendix 3.
14. The Committee also heard oral evidence at four meetings between 18 April 2012 and 6 June 2012 from the following organisations:
 - The Department for Regional Development
 - NILGA
 - NIW
 - The National House Building Council (NHBC)
 - The Construction Employers Federation (CEF)
 - The Consumer Council
 - The Law Society
 - The Northern Ireland Environment Agency (NIEA)
15. The relevant extracts from the Minutes of Proceedings are included at Appendix 1. Minutes of the evidence sessions are included at Appendix 2. The Committee would wish to thank all those who provided both written and oral evidence.

Summary of Recommendations

16. The Committee recommends that statutory providers and representatives of the construction and financial sectors agree a bond level that is acceptable to all parties and which includes an inflationary amount.
17. The Committee recommends that the Department review its procedures with a view to ensuring a more prompt reaction to calling in the bond. This process should be aimed at alleviating public health and safety risks to residents.
18. The Committee recommends that the Minister urgently review the Private Streets legislation to ensure that it has adequate measures to deal with the increasing occurrences of unadopted roads.
19. The Committee recommends the Water and Sewerage Order is reviewed to bring it into line with the Private Streets Order in respect of provision of detailed plans to Building Control and closing the loophole where a developer can chooses to enter into a bond agreement or not.
20. The Committee recommends that NILGA should coordinate a “prioritisation audit” within each council area. This audit should list the numbers of unadopted infrastructures and apply an agreed grading, based on risks to public health and safety, to allow for priority based intervention bids by the Department and/or NIW should sufficient resources be made available.
21. The Committee recommends that the property certificate should be adapted to include the legal opinion as to the condition of the roads and sewers, whether these have been adopted and advising potential vendors of the consequences non-adoption will have on them.
22. The Committee recommends that the legal profession, in conjunction with other stakeholders, compile an information guide for vendors to include, for example, information on their rights and entitlements, resolution techniques and dealing with administration/bonding services.
23. The Committee recommends, therefore, that a Code of Practice or protocol be compiled advising of the structures that are in place (or are being put in place) to effect the prompt triggering of bond enforcement.
24. The Committee recommends, therefore, that a Cooperation Forum is established to agree how, collectively, the issue of unadopted roads and sewers can be dealt with. Without being proscriptive, this should be representative of residents, the statutory and local government bodies, contractors, bonds services and the legal profession.
25. The Committee suggests that the body define its own Terms of Reference but that it may wish to include establishing the level of bonds, compilation of codes or practice, protocols and information packs and assessing whether the current (and future) legislative provisions are sufficient.

Key Issues

The Bond

26. The primary legislation in respect of the adoption of roads and sewers are as follows:
- Private Streets (Northern Ireland) Order 1980;
 - Private Streets (Amendment) (Northern Ireland) 1992; and
 - Water and Sewerage Services (Order) 2006
27. Prior to the separation of Water Service and the Department in 2006, both roads and sewers were legislated for in the Private Streets Order. A number of respondents, particularly those from the construction industry, raised concerns that, as a result of this segregation, there was now a requirement for two bonds, one each for roads and sewers. The industry and bond providers claimed that the cost of providing dual coverage had risen to £7,500 from approximately £3,000 when there was one piece of legislation.
28. Whilst the Committee does not wish to prohibit recovery within the construction industry, it has received sufficient evidence to indicate that the level of bond coverage is currently insufficient to cover remedial works that might be required to bring infrastructures to a standard where they could be adopted. In addition, as the process for calling in the bond can take a significant period of time, it is often the case that costs have increased by a compounded inflationary figure. This has the significant potential of exposing the statutory authorities, and ultimately the taxpayer, with this burden.
29. **The Committee recommends, therefore, that statutory providers and representatives of the construction and financial sectors agree a bond level that is acceptable to all parties and which includes an inflationary amount.**
30. As indicated, the process for triggering the bond is lengthy and complex, particularly where a developer has gone into liquidation. There are a number of occasions where the statutory bodies are not advised that a developer is in liquidation until a significant period of time has passed. The Committee is also not content that the Department waiting up to 18 months after a developer has received the preliminary certificate. The Committee believes that, whilst not intentional by the Department, this process does not take into account the very significant risk of resident's safety, aside from the major inconvenience caused.
31. **The Committee recommends that the Department review its procedures with a view to ensuring a more prompt reaction to calling in the bond. This process should be aimed at alleviating public health and safety risks to residents.**

Legislation

32. The Committee were concerned that the Private Street Orders detailed above were outdated, being 30 years and 20 years old respectively. Members were also concerned that the principles of the Orders did not adequately recognise the current economic circumstances or those of the consumer.
33. The Committee is also extremely concerned that there is no mandatory requirement in the Water and Sewerage Services (Order) 2006 for a developer to submit a drainage plan to Building Control or to even enter into an agreement with NIW in respect of a bond. The Committee considers these to be major flaws that need redressing urgently
34. Committee has considered the merits of having one Order to consolidate the above legislation. However, Committee is mindful that there is a degree of urgency with regards to the review of the legislation and is content to recommend that the Minister urgently review

the Private Streets legislation to ensure that it has adequate measures to deal with the increasing occurrences of unadopted roads.

35. **In addition, the Committee recommends the Water and Sewerage Order is reviewed to bring it into line with the Private Streets Order in respect of provision of detailed plans to Building Control and closing the loophole where a developer can choose to enter into a bond agreement or not.**

Prioritisation Audit

36. The Committee received a significant amount of evidence from individuals and through local councillors of the devastating impacts that unadopted roads and sewers can have on residents and their properties. As previously indicated, the resources required to undertake the “righting” of all defects is not available.
37. However, the Committee does not believe that this should be the end of the matter and **recommends that NILGA should coordinate a “prioritisation audit” within each council area. This audit should list the numbers of unadopted infrastructures and apply an agreed grading, based on risks to public health and safety, to allow for priority based intervention bids by the Department and/or NIW should sufficient resources be made available.**

Property Certificate and Information

38. A number of respondents raised concerns about the level of detail contained within the property certificate, particularly with regards to the absence of adequate information regarding the condition of roads and sewers. This has a potential adverse impact on vendors should the property be resold.
39. In addition, there were complaints that, whilst the Department could be contacted frequently by developers and the legal profession, those dealing with the real impact of unadopted infrastructures, residents, were not afforded the same access and where not privy to the same level of information.
40. The Committee believes that the onus for identification of potential issues lies with the legal profession and is best carried out during their searches in respect of resale of properties. **The Committee recommends, therefore, that the property certificate should be adapted to include the legal opinion as to the condition of the roads and sewers, whether these have been adopted and advising potential vendors of the consequences non-adoption will have on them.**
41. In addition, **the Committee recommends that the legal profession, in conjunction with other stakeholders, compile an information guide for vendors to include, for example, information on their rights and entitlements, resolution techniques and dealing with administration/bonding services.**

Code of Practice

42. As previously indicated, Committee has expressed concern that residents in houses with unfinished infrastructures do not have adequate opportunity to redress their concerns with the statutory organisations. The Committee believes that if an appropriate system were in place, the Department and/or NIW could adapt this to aid in the quicker triggering of the bond enforcement processes.
43. **The Committee recommends, therefore, that a Code of Practice or protocol be compiled advising of the structures that are in place (or are being put in place) to effect the prompt triggering of bond enforcement.**

Cooperation Forum

44. Finally, the Committee was struck by the number of organisations and stakeholders that are involved in the process from construction to residency and, in very many cases, beyond that. The Committee were also cognisant that each of these stakeholders had their own agendas and that a collective view of or challenge to the problem was not particularly evident.
45. The Committee believes, therefore, that a greater degree of coordination and cooperation is required to address the problems associated with unadopted roads and sewers. **The Committee recommends, therefore, that a Cooperation Forum is established to agree how, collectively, the issue of unadopted roads and sewers can be dealt with. Without being proscriptive, this should be representative of residents, the statutory and local government bodies, contractors, bonds services and the legal profession.**
46. **The Committee suggests that the body define its own Terms of Reference but that it may wish to include establishing the level of bonds, compilation of codes or practice, protocols and information packs and assessing whether the current (and future) legislative provisions are sufficient.**
47. The Committee is content that this represents an appropriate way forward



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings Relating to the Report

Wednesday 18 January 2012

Room 21, Parliament Buildings

Present: Mr Jimmy Spratt MLA (Chairperson)
Mr Pat Doherty MP MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mr Joe Byrne MLA
Mr Michael Copeland MLA
Mr Stewart Dickson MLA
Mrs Dolores Kelly MLA
Mr Seán Lynch MLA
Mr Ian McCrea MLA
Mr Stephen Moutray MLA
Mr Cathal Ó hOisín MLA

In attendance: Mr Paul Carlisle (Clerk to the Committee)
Mrs Shauna Mageean (Assistant Assembly Clerk)
Mr Oliver Bellew (Assistant Assembly Clerk)
Mr Andrew Larmour (Clerical Supervisor)
Ms Alison Ferguson (Clerical Officer)

10.29am The meeting commenced in public session.

5. Briefing by NILGA on Unadopted Roads

10.37am The following NILGA representatives joined the meeting:

- Evelyne Robinson – President.
- Dermot Curran – Vice President.
- Arnold Hatch – Vice President.
- David McCammick – Chief Executive, Antrim Borough Council.

The representatives presented to the Committee in respect of the above. Following the presentation, Members put questions.

10.55am Mr Beggs left the meeting.

10.57am Mr Beggs re-joined the meeting.

11.14am The representatives left the meeting.

6. Departmental briefing on Unadopted Roads

11.15am The following officials joined the meeting:

- Dr Andrew Murray – Director of Network Services
- Francis Miskelly – Principal Technical Engineer

The officials presented to the Committee in respect of the above. Following the presentation, Members put questions.

11.40am Mr Doherty left the meeting

11.44am Mr Doherty re-joined the meeting

11.52am Mr Copeland left the meeting

11.55am The representatives left the meeting

Agreed: The Committee noted a proposal from the Chairperson and agreed to launch a formal inquiry on matters relating to unadopted roads. It was agreed that the Committee would consider terms of reference for the inquiry at the meeting of 1 February 2012. The Committee also agreed to notify any other relevant committees of its intention to commence the inquiry.

[EXTRACT]

Wednesday 1 February 2012

Room 21, Parliament Buildings

Present: Mr Jimmy Spratt MLA (Chairperson)
Mr Pat Doherty MP MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mr Joe Byrne MLA
Mr Michael Copeland MLA
Mr Stewart Dickson MLA
Mrs Dolores Kelly MLA
Mr Ian McCrea MLA
Mr Stephen Moutray MLA
Mr Cathal Ó hOisín MLA

In attendance: Mr Paul Carlisle (Clerk to the Committee)
Mr Oliver Bellew (Assistant Assembly Clerk)
Mr Andrew Larmour (Clerical Supervisor)
Ms Alison Ferguson (Clerical Officer)
Mr Jonathan McMillen (Legal Adviser)

Apologies: Mr Seán Lynch MLA

10.32am The meeting commenced in closed session in order that the Committee take advice from Assembly Legal Services

7. Terms of Reference: Committee Inquiry – Unadopted Roads

Members noted a briefing paper detailing a draft terms of reference for the Committee's inquiry into unadopted roads in Northern Ireland.

Agreed: Members agreed the draft terms of reference and signposting, subject to amendments. The Committee also agreed to issue a press release announcing the commencement of the inquiry.

[EXTRACT]

Wednesday 8 February 2012

Room 21, Parliament Buildings

Present: Mr Jimmy Spratt MLA (Chairperson)
Mr Pat Doherty MP MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mr Stewart Dickson MLA
Mrs Dolores Kelly MLA
Mr Ian McCrea MLA
Mr Stephen Moutray MLA
Mr Seán Lynch MLA
Mr David McNarry MLA

In attendance: Mr Paul Carlisle (Clerk to the Committee)
Mr Oliver Bellew (Assistant Assembly Clerk)
Mr Andrew Larmour (Clerical Supervisor)
Ms Alison Ferguson (Clerical Officer)

Apologies: Mr Joe Byrne MLA
Mr Cathal Ó hOisín MLA

10.30am The meeting commenced in public session

4. Correspondence

Members noted correspondence received.

Agreed: The Committee noted correspondence from the Department in relation to Unadopted Roads in Northern Ireland and agreed to include it in the Committee's Report.

8. Any other business

Members noted a list of organisations to whom the Committee intended writing to seek views on the Committee's inquiry into Unadopted Roads in Northern Ireland.

[EXTRACT]

Wednesday 29 February 2012

Room 21, Parliament Buildings

Present: Mr Joe Byrne MLA
Mr Roy Beggs MLA
Mr Stewart Dickson MLA
Mrs Dolores Kelly MLA
Mr Seán Lynch MLA
Mr Ian McCrea MLA
Mr David McNarry MLA
Mr Cathal Ó hOisín MLA

In attendance: Mr Paul Carlisle (Clerk to the Committee)
Mr Oliver Bellew (Assistant Assembly Clerk)
Mr Andrew Larmour (Clerical Supervisor)
Ms Alison Ferguson (Clerical Officer)

Apologies: Mr Jimmy Spratt MLA (Chairperson)
Mr Pat Doherty MP MLA (Deputy Chairperson)
Mr Stephen Moutray

10.31am The meeting commenced in public session

7. Update on Committee Inquiry

The Clerk provided an update on the Committee Inquiry into Unadopted Roads in Northern Ireland. Members noted a nil return from NAMA in relation to the call for evidence.

Agreed: The Committee agreed to write to NAMA seeking information on surety bonds which they may hold in respect of unadopted roads in Northern Ireland, and to ask the Department for their views on the value of bonds held by NAMA.

[EXTRACT]

Wednesday 28 March 2012

Room 21, Parliament Buildings

Present: Mr Pat Doherty MP MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mr Joe Byrne MLA
Mr Stewart Dickson MLA
Mrs Dolores Kelly MLA
Mr Seán Lynch MLA
Mr Ian McCrea MLA
Mr David McNarry MLA
Mr Stephen Moutray MLA
Mr Cathal Ó hOisín MLA

In attendance: Mr Paul Carlisle (Clerk to the Committee)
Mr Oliver Bellew (Assistant Assembly Clerk)
Mr Andrew Larmour (Clerical Supervisor)
Ms Alison Ferguson (Clerical Officer)

Apologies: Mr Jimmy Spratt MLA (Chairperson)

10.32am The meeting commenced in public session

7. Unadopted Roads Committee Inquiry – Summary of submissions for oral evidence

The Clerk briefed the Committee on the submissions received in relation to the Committee's inquiry into un-adopted roads in Northern Ireland.

Agreed: The Committee agreed the list of organisations to be invited to give oral evidence before the Committee.

12.07pm The meeting was adjourned

[EXTRACT]

Wednesday 18th April 2012

Room 21, Parliament Buildings

Present: Mr Pat Doherty MP MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mr Joe Byrne MLA
Mr Stewart Dickson MLA
Mrs Dolores Kelly MLA
Mr David McNarry MLA
Mr Stephen Moutray MLA

In attendance: Mr Paul Carlisle (Clerk to the Committee)
Mr Oliver Bellew (Assistant Assembly Clerk)
Miss Tara McKee (Clerical Supervisor)
Ms Alison Ferguson (Clerical Officer)

Apologies: Mr Jimmy Spratt MLA (Chairperson)
Mr Ian McCrea MLA

10.30am The meeting commenced in public session

6. NILGA Briefing – Oral Briefing on Un-adopted Roads Inquiry

11.27am The following Representatives joined the meeting:

Derek McCallan – Chief Executive NILGA

Claire Bradley – Policy Support Officer

The Representatives presented to the Committee in respect of the above. Following the presentation, Members put questions.

11.37am Mr McNarry re-joined the meeting

11.50am The Representatives left the meeting

7. NHBC Briefing – Oral Briefing on Un-adopted Roads Inquiry

11.51am The following Representative joined the meeting:

Mr David Little – Regional Director for Northern Ireland and the Isle of Man

11.53am Mr Moutray left the meeting

The Representative presented to the Committee in respect of the above. Following the presentation, Members put questions.

12.24pm The Representative left the meeting

Agreed: Members agreed to invite Building Control NI to give oral evidence in respect of the Committee's Inquiry.

1.16pm The meeting was adjourned

[EXTRACT]

Wednesday 2nd May 2012

Room 21, Parliament Buildings

Present: Mr Pat Doherty MP MLA (Deputy Chairperson)
Mr John Dallat MLA
Mr Stewart Dickson MLA
Mrs Dolores Kelly MLA
Mr Ross Hussey MLA
Mr Séan Lynch MLA
Mr Ian McCrea MLA
Mr David McNarry MLA
Mr Stephen Moutray MLA
Mr Cathal Ó'hOisín MLA

In attendance: Mr Paul Carlisle (Clerk to the Committee)
Mr Oliver Bellew (Assistant Assembly Clerk)
Miss Tara McKee (Clerical Supervisor)
Ms Alison Ferguson (Clerical Officer)

Apologies: Mr Jimmy Spratt MLA (Chairperson)

10.30am The meeting commenced in public session

5. Consumer Council Briefing – Oral Briefing on Un-adopted Roads Inquiry

10.43am The following Officials joined the meeting:

10.46am Mr McCrea joined the meeting

Graham Smith – Head of Water

Robert Dempster – Senior Consumer Affairs Officer

The Officials presented to the Committee in respect of the above. Following the presentation, Members put questions.

11.19am The Officials left the meeting

6. Law Society Briefing – Oral Briefing on Un-adopted Roads Inquiry

11.19am The following representatives joined the meeting:

11.23am Mr McCrea left the meeting

Brian Spears – Law Society

Anne Brown – Chairwoman of the Conveyancing & Property Committee

Imelda McMillan – Law Society President

The representatives presented to the Committee in respect of the above. Following the presentation, Members put questions.

11.45am Mr Moutray left the meeting

11.46am Mr McNarry left the meeting

11.48am Mr Lynch left the meeting

11.50am Mr Lynch re-joined the meeting

11.54am Mr McNarry re-joined the meeting

11.59am Mr Ó'hOisín left the meeting

12.04pm The representatives left the meeting

7. Building Control Briefing – Oral Briefing on Un-adopted Roads Inquiry

12.06pm The following representatives joined the meeting:

Ian Wilson – Lisburn City Council

Jonathan Hayes – Armagh City and District Council

Ken Hunter – Southern Group Building Control

Trevor Martin – Belfast City Council

The representatives presented to the Committee in respect of the above. Following the presentation, Members put questions.

12.28pm The Officials left the meeting

13.00pm The meeting was adjourned

[EXTRACT]

Wednesday 9th May 2012

Room 21, Parliament Buildings

Present: Mr Pat Doherty MP MLA (Deputy Chairperson)
Mr John Dallat MLA
Mr Stewart Dickson MLA
Mrs Dolores Kelly MLA
Mr Ross Hussey MLA
Mr Ian McCrea MLA
Mr David McNarry MLA
Mr Stephen Moutray MLA
Mr Cathal Ó'hOisín MLA

In attendance: Mr Paul Carlisle (Clerk to the Committee)
Mr Oliver Bellew (Assistant Assembly Clerk)
Miss Tara McKee (Clerical Supervisor)
Ms Alison Ferguson (Clerical Officer)

Apologies: Mr Jimmy Spratt MLA (Chairperson)
Mr Séan Lynch MLA

10.31am The meeting commenced in public session

5. Northern Ireland Water briefing: Oral briefing on Un-adopted Roads Inquiry

10.54am The following Representatives joined the meeting:

Sara Venning – Director of Customer Service Delivery

Liam Mulholland – Head of Customer Service

Frank Stewart – Head of Developer Services

The Representatives presented to the Committee in respect of the above. Following the presentation, Members put questions.

Agreed: It was agreed that the representatives would write to the Committee with information on developments which had come under the control of the National Assets Management Agency.

11.40am Mr McNarry left the meeting

11.41am Mr McNarry re-joined the meeting

11.42am Mr Dallat left the meeting

11.46am Mr Moutray left the meeting

11.47am Mr Moutray re-joined the meeting

11.52am Mr Hussey left the meeting

11.53am Mr McCrea joined the meeting

11.54am Mrs Kelly left the meeting

11.55am The Officials left the meeting

6. Construction Employers Federation Briefing – Oral Briefing on Un-adopted Roads Inquiry

11.56am The following Representatives joined the meeting:

Nigel Lucas – Deputy Secretary

Conor Mulligan – Lagan Homes

Bryan Vaughan – Vaughan Developments

Archie Rowan – Micwall Developments

11.58am Mr Hussey re-joined the meeting

The Representatives presented to the Committee in respect of the above. Following the presentation, Members put questions.

12.02pm Mrs Kelly re-joined the meeting

12.14pm The Representatives left the meeting

7. Departmental Briefing – Oral Briefing on Un-adopted Roads Inquiry

12.15pm The following Officials joined the meeting:

Andrew Murray – Director of Network Services

Francis Miskelly – PPO Engineer

12.16pm Mr Ó'hOisín left the meeting

12.16pm Mr Ó'hOisín re-joined the meeting

12.17pm Mr Dallat re-joined the meeting

The Officials presented to the Committee in respect of the above. Following the presentation, Members put questions.

Agreed: It was agreed that the Officials would write to the Committee with information on developments which had come under the control of the National Assets Management Agency.

12.45pm The Officials left the meeting

12.52pm The meeting was adjourned

[EXTRACT]

Wednesday 6th June 2012

Room 21, Parliament Buildings

Present: Mr Pat Doherty MP MLA (Deputy Chairperson)
Mr John Dallat MLA
Mr Stewart Dickson MLA
Mr Ross Hussey MLA
Mrs Dolores Kelly MLA
Mr Ian McCrea MLA
Mr David McNarry MLA
Mr Stephen Moutray MLA

In attendance: Mr Paul Carlisle (Clerk to the Committee)
Mr Oliver Bellew (Assistant Assembly Clerk)
Ms Alison Ferguson (Clerical Officer)

Apologies: Mr Jimmy Spratt MLA (Chairperson)
Mr Séan Lynch MLA
Mr Cathal Ó hOisín MLA

10.38am The meeting commenced in public session

7. Northern Ireland Environment Agency Briefing – Unadopted Roads Inquiry

11.40am The following Official joined the meeting:

Mark Livingstone – Northern Ireland Environment Agency

The Official presented to the Committee in respect of the above. Following the presentation, Members put questions.

11.52am Mr Dallat re-joined the meeting

11.55am Mr Hussey left the meeting

11.58am Mr Hussey re-joined the meeting

12.00pm The Official left the meeting

12.01pm Mrs Kelly left the meeting

1.07pm The meeting was adjourned

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

18 April 2012

Members present for all or part of the proceedings:

Mr Pat Doherty (Deputy Chairperson)
 Mr Roy Beggs
 Mr Joe Byrne
 Mr Stewart Dickson
 Mrs Dolores Kelly
 Mr David McNarry
 Mr Stephen Moutray

Witnesses:

Mr David Little *National House-Building Council*

1. **The Deputy Chairperson:** David, you are very welcome. After you make your submission, members may wish to ask you some questions.
2. **Mr David Little (National House-Building Council):** Thank you, Chairperson and members. This is the first time that I have appeared before one of these Committees. We were happy to have the opportunity to respond to your inquiry. I sent you a small three-page submission and a copy of the terms and conditions on which we give road bonds. I am here to give you the perspective of an organisation that is a major supplier and backer of bonds in Northern Ireland. I am the National House-Building Council's (NHBC) regional director in Northern Ireland and the Isle of Man.
3. I will give you some background to NHBC. We are 75 years old and the major provider of warranties for new homes throughout the UK and have operated in Northern Ireland since 1970. Our main purpose is to raise standards to protect house-owners. We achieve that through maintaining a register of builders and developers, the development of comprehensive standards for construction and having a well-trained and directly employed group of inspectors and claims investigators. We inspect all homes under construction.
4. Since 1990, we have provided a road and sewerage service to our longest-established builders and developers in the UK. These are typically companies that have had a relationship with us for at least 15 years and, therefore, that are financially sound almost by definition. We apply a small administration charge but otherwise do not charge for bonds if they are cancelled by the due date, which is normally four years or so after they are put in place. If they are not cancelled by that point, we start to apply late redemption charges. Those charges escalate over time, so there is really an incentive for builders and developers to make sure that bonds are dealt with, the road is completed and the release achieved. Everything is explained in the booklet that I supplied to you.
5. From 1990 to date, we have acted as security for 4,959 bonds in Northern Ireland, with an initial value of well over £210 million. At the moment, there are 1,220 active bonds that we have provided to builders and developers in Northern Ireland with a current value of just under £50 million. Some 75% of all bonds for which we have acted as surety have been cancelled, which indicates to me that, until circumstances changed recently, builders and developers have, by and large, dealt with their obligations.
6. The current level of activity in housebuilding in Northern Ireland is very low; I do not need to rehearse that. However, in the last five years, we have provided 624 new road and water bonds, with an initial value of £38.7 million. It is our intention to continue to provide significant support to the housebuilding industry where we can. The facility has been greatly valued by builders and developers. Where bonds are available for commercial sources, they are becoming increasingly rare and expensive.

7. There is a limit to the bonds that we can provide to any builder or developer, and that is based on their activity over the last four years. Basically, their bond limit with us is the last four years' registrations with us multiplied by £3,000. That has worked very well over the years. The bond limits are recalculated every year. If the builder's production comes down, as it has recently, their bond limit comes down. Our thinking is that, if the bond limit is coming down, cash flow is coming down. Therefore, we want them to concentrate on their existing bonds and deal with those. We are not too keen to give additional bonds to builders that are already overexposed.
8. As was mentioned, we now require separate bonds for NI Water and the Department for Regional Development's (DRD) Roads Service, rather than a combined road and sewer bond. I am aware that you will probably get a different story from Roads Service and NI Water but the view of the industry is that the value of bonding required has increased significantly as a result. We were told that the values of the combined road and sewer bond would be similar to the two separate bonds but we believe that that is not the case.
9. The Construction Employers Federation has, I am sure, made a submission to you. It has done quite a lot of work on current infrastructure costs and talked to NI Water and Roads Service about that. One of our biggest developers has just given me information that, since NI Water and Roads Service required separate bonds, the average they are required to provide in bonding is now £7,250 per house, which is significant.
10. I read the Hansard report of 7 February with great interest. I also saw reports in the local media of MLAs becoming involved. I live in Mr Beggs's constituency and I see that he has been active recently in pointing out issues that, I suspect, will cost us money in the near future.
11. There is a bit of confusion about bonds. Where the builder or developer no longer exists and leaves unadopted bonds, Roads Service is entitled to call the bond from the surety provider. With respect, I suspect that the National Asset Management Agency issue is a bit of a red herring. Once the bond is in place, the relationship is instigated between a surety provider such as ourselves and Roads Service or NI Water. The builders or developers are in the middle of that. However, if the builder or developer goes out of business, there is a direct relationship between Roads Service and us or other surety providers, or NI Water and us. So, you should not necessarily overcomplicate that.
12. If the bond is called, and the builder and developer no longer exists, that is the risk that we and other surety providers have taken. We are insurance companies; that is what we are here for. We live with that.
13. Of the bonds that we provided in Northern Ireland, 75% have already been cancelled. Downturn in the past six years has been unprecedented. Housing developments are taking longer to complete. Builders' cash flow has taken a serious hit for those builders who are surviving. Completion of development roads is, therefore, taking longer.
14. You will all be aware of numerous cases where development roads and paths remain at base course stage. I respectfully suggest that that is not an unacceptable position in the interim until the market recovers, provided that everything is maintained in a safe condition. Insurance and maintenance procedures have to be in place.
15. In the good times, five or six years ago, builders were happy enough to agree very large bonded areas with Roads Service. Only a small percentage of those areas may have been developed. Roads Service has been very helpful in some cases in splitting those bonds into roads that have been completed where houses are built and those for future completion.
16. The other issue is with NI Water bonds. Article 161 bonds that we have seen

- specify that reductions will be available when the majority of homes are occupied. NI Water is very reluctant to provide preliminary certificates until 80% of houses are occupied. That is causing a difficulty. Its website guidance notes state that 80% of homes have to be completed in a bonded area, whereas the legal documentation states that it is the majority, which is 51% to me.
17. We are aware of cases where builders are finding it difficult to obtain justifiable reductions. Most surety providers are very reluctant to provide more bonds until builders have dealt with and got reductions in their existing bonds. It is most important that Roads Service and NI Water are able to agree to reductions where justifiable.
 18. We have also seen cases where Roads Service stepped in to complete development roads despite the builder remaining in existence and with homes to complete. By the letter of the law, it can do that, but that is causing some difficulty. That was not done historically.
 19. The combined road and sewer bond by definition covered one area, whereas the road bonds may now cover a different area from the NI Water bonds. Therefore, it is much harder to get reductions, especially if there is something like a pumping station on the site, where NI Water, quite rightly, will not want to provide too much in the way of reductions until it is sure that the pumping station is built, operating and through its maintenance period.
 20. The NHBC fully supports the requirement for a mechanism to ensure that roads and sewers are completed. There is no question about that. Protection of homeowners is what we do.
 21. We suggest that Roads Service and NI Water should be able to justify the values currently being requested for bonds. As I said, we understand that the Construction Employers Federation can provide a lot of information on that. NI Water and DRD Roads Service should allocate sufficient resources to ensure that applications for reductions in release of bonds are assessed and progressed where justified and without undue delay, because that enables builders, where the market is recovering, to get more bonds for their new developments.
 22. Provided that development roads and paths are to a satisfactory base course standard and the builder or developer continues to trade, I would suggest that it may be reasonable, in the short to medium term and in current market conditions, for that to be considered satisfactory, provided that maintenance and insurance arrangements are in place.
 23. As a slight side track, the Flood and Water Management Act 2010 has been enacted in England and Wales. That was introduced to deal with major flooding issues and excessive run-off from storm drains and developments. One of its outworkings, however, is that work is going on to develop an accredited contractor scheme, which would be insurance-backed. That would mean that accredited contractors would come in and do the storm drainage infrastructure on a house building site, which would give assurance to NI Water that the work is being done correctly and will do away with the need for builders to produce water bonds. We should keep an eye on that. When that is established and is shown to work, it may be an option for Northern Ireland.
 24. The market is, hopefully, recovering slightly. Builders are discovering that they have to meet an awful lot of additional costs that were not there five years ago. There have been significant increases in costs of water and sewer connections. Planning fees, electrical supply costs and connection costs have gone up. I understand that there is a potential application of rates to houses under construction, which is an extreme worry.
 25. However, future availability of road and water bonds will be one of the most significant factors in determining the rate of recovery of the local house building industry. If the Committee should recommend that changes in bonding arrangements are desirable,

- we would be keen to be involved in any discussions and help where we can. Obviously, should any further information be required that you think I could help with as your inquiry proceeds, I would be more than happy to provide that. Thank you for your attention.
26. **The Deputy Chairperson:** How much detail do you go into with regard to the financial checks that you carry out into contractors before you issue a bond?
27. **Mr D Little:** We do bonds only for builders and developers that have been with us for 15 years. A builder does not get on our register until we do a financial check. We do a technical check on the builder as well. We observe him building houses to make sure he can do it. We do financial checks on a developer coming on to the register, but in the current environment we are not relying on 15-year-old financial checks. We now do continuing checks on all builders and developers on the register, particularly if they ask for a large new bond.
28. **Mr Beggs:** Thank you for your presentation; it was very useful. You indicated that your organisation provides bonds elsewhere, not just in Northern Ireland.
29. **Mr D Little:** It is throughout the UK. Everything we do is done throughout the UK as far as possible.
30. **Mr Beggs:** You also mentioned that you were using the figure of about £3,000 per house in previous years but that it has gone up as high as £7,250.
31. **Mr D Little:** That is the figure that a local developer is getting for the bonding requirement he is being asked for, when you aggregate the NI Water and the road bonds.
32. **Mr Beggs:** Is that because of a specific issue? For example, is the development up a long lane?
33. **Mr D Little:** No; that is one of our mainstream developers.
34. **Mr Beggs:** What level of bonds are required elsewhere? Has there been any explanation as to why there has been an increase of over 100%? What is the bond value in England, Scotland or Wales?
35. **Mr D Little:** The £3,000 figure is one that we have always used to calculate the builder's bond capacity with us; it is not necessarily a figure that was in place. You will understand that in a normal market builders are getting bonds cancelled all the time and are taking out new bonds all the time, so it is a very fluid situation. The £3,000 figure worked for many years, but, as I said, with the separate bond requirements for NI Water and Roads Services, the information I am getting from the industry is that the overall level of bonding required, if you average it out per house, is much greater.
36. **Mr Beggs:** Are bonds in Northern Ireland significantly different to those elsewhere? That is an important first question.
37. **Mr D Little:** There are some in my organisation who believe that the level of bonding here is higher than it is in England and Wales. Again, NI Water and Roads Service will disagree with that.
38. **Mr Beggs:** I am trying to draw from your organisation's experiences elsewhere. There are two specific issues that I have come across since we have started this investigation. One has been in smaller developments of fewer than six houses — it could be a very large garden on which five houses have been built — where Roads Service does not require that a road bond be put in place by the developer. Are you aware of a mechanism elsewhere that ensures that that work is finished? I am dealing with one constituent who is in such a development; the builder has gone bust and there is no bond and no road.
39. **Mr D Little:** I am not aware of how that would be managed elsewhere. There are private roads all over the UK. There are a number of cases here where I know there are private roads, but we would not be involved in any bonding agreements. I was listening to the previous discussion, and it is up to the

- purchaser's solicitor to make sure that there are arrangements in place for the roads to be adopted or maintained. When the market was booming, it may have been that things like building control, final certificates and minor details like road bonds were not properly examined.
40. **Mr Beggs:** You also mentioned that you felt that Roads Service was, on occasions, moving in too fast when the builder was still there. My experience has been that Roads Service gives the developer almost too long to fix the problem themselves and that only as a very last resort does it, due to the builder having not responded, go in and fix things for the constituent and then draw the money down out of the bond. Can you provide us with any evidence of where you feel Roads Service has moved too quickly? My experience has been the opposite.
41. **Mr D Little:** I would prefer not to mention specific cases, but I can certainly give you that information elsewhere. As I said, Roads Service was perfectly entitled under the terms of the bond to do what it did, it is just it had not done that before. If that is going to become widespread, the perceived risk of acting as surety for a bond will change.
42. **Mr McNarry:** Thanks very much, David, for your very comprehensive presentation; I have learnt a lot.
43. Like many members, I have sympathy with the current struggles of the builder, but that is equalised by the tales you hear from people who have bought houses where there are problems. You said that Roads Service was helpful in cases where builder could not complete a development and allowed them do a bit of it; did I pick you up right on that?
44. **Mr D Little:** Five or six years ago, a lot of builders were doing over 100 units a year and were quite happy to take out big bonds. As the market died away, they found that maybe a year ago they were in a position where only 20% of the bonded area had been developed. It is not always possible but in some cases, Roads Service has been happy to split the big bond into two bonds. One will cover the work that the builder has done so that they will be able to get the work finished and get the houses released and the other will be there for when work starts again.
45. **Mr McNarry:** That seems a very sensible arrangement. How obstructive would the builders' cash flow be? Is that becoming more and more of an issue? Everybody is saying, "Yes, you can do this" or "You might be able to do this", but builders are saying, "We have not got the money to do it." What impact is that having on resale difficulties in cases where you have incomplete sites? I see that as part of the broader picture. Finally, are the NHBC certificates affected in any way with incomplete sites?
46. **Mr D Little:** The NHBC warranty relates to the house and the immediately surrounding grounds. There is no connection between the NHBC warranty on new homes and the road and sewer infrastructure. The only minor caveat to that would be if someone were building a one-off house out in the country and putting in their own treatment plant, for example. That would generally all be covered by the warranty, but it would be within the customer's grounds, if you like.
47. **Mr McNarry:** So, you issue a certificate for a builder who builds a house, but the roads and everything else around it can be upside down?
48. **Mr D Little:** We would be very keen to persuade builders that there should be a safe means of access to a house. Some years ago, the Council of Mortgage Lenders brought in a requirement that the warranty organisations, including us, should provide what the council calls a cover note for a house before it is handed over and before legal completion occurs. If our inspector was not able to get his car up to the house, neither could a furniture van, and we would not "final off" the house. Generally speaking, the situation here has much improved over the past 15 years. Most builders would have the base course roads and paths done before the first

- house was occupied on any site. That is the minimum that we would like to see.
49. **Mr McNarry:** What about the resale difficulties?
50. **Mr D Little:** If the solicitors who act for the original purchasers check properly and are satisfied that a bond is in place, I imagine that there should be no legal difficulties for resale. There may be some difficulties where the potential second buyer says that the roads are not finished and decides to buy a property where the roads are finished. If the solicitors have done their work correctly in the first place, they should be able to satisfy the second and third purchasers that a bond is in place and, in due course, if the builder will not finish the roads, Roads Service will call in the bond.
51. **Mr McNarry:** I can see utopia, but on some of the sites that I go to — forget about negative equity and everything else — people are concerned. That is why I am interested in this bit about part-finishing a site up to the number of houses finished. I am concerned about the builder having the money to do it, and his cash flow, so it would be good if that were possible.
52. **Mr D Little:** With respect, that scenario would only arise if, while the market was falling back, the builder had, perhaps, developed the first 20% of a large field, and the remaining 80%, although it had planning permission, was still a field, without any other roads or open manholes and so forth. It is not something that Roads Service would do very often. There are particular circumstances.
53. **Mr McNarry:** I understand that. Perhaps I will take my camera and photograph what I actually see, which is people living in half-built or quarter-built housing developments, and whole sites lying there, while prospective buyers are coming along and asking what is going on, because there are no roads. That needs tidied up.
54. **Mr D Little:** The problem of ghost estates that we saw in the South of Ireland has not been replicated here to anything like the same degree. In the past five years, the number of houses being finished in Northern Ireland has been running well ahead of the number of houses being started. The amount of stock is considerably lower than it has ever been. The level of house building now is as low as I can find in our records.
55. There are particular circumstances, such as those at Quoile Crescent in Downpatrick, where the local MP got involved, but there was never a road bond for that scheme because of the layout of the site. There are not too many developments like that one, however. It has to be said that the housing associations —
56. **Mr McNarry:** I hope that I have not got them all in Strangford, because I have three or four cases that are pretty grim.
57. **Mrs D Kelly:** Thank you for your presentation. I want to approach this issue from another perspective. A lot of people in my constituency feel badly let down by developers when it comes to the completion of sites, and that is the experience of too many, hence this inquiry. Further to that, even contacting your organisation on behalf of some constituents has proven very difficult. Some people have had particular issues about plumbing in their houses and they feel that they were given the runaround when they were in need of assistance and needed to restore their faith in the developer.
58. **Mr D Little:** I will give you my card. We have an office in Belfast, and always have had, and I am perfectly happy to talk to anybody who feels they are having difficulty in getting through to colleagues.
59. **Mrs D Kelly:** That would be useful.
60. Picking up on the point about your financial checks when issuing bonds, a number of the estates in my constituency, particularly in the Lurgan area, have suffered from developers starting off sites and other developers coming in. In those cases, the ownership of the site is with one developer, another developer

- buys or leases the ability to build the houses and one of them goes bankrupt. In some cases, we have seen people who have declared themselves bankrupt re-emerging as another company, whether it is weeks or months later, and starting on another site. That is a hugely complicated mess that does not inspire confidence. I know a number of developers who are distraught at the behaviour of some of their colleagues. Such instances are the exception rather than the rule, but those are the sorts of stories that feed the public perception of wrongdoing.
61. **Mr D Little:** We have a substantial commercial department in our headquarters in Milton Keynes, where we have access to regular credit reports. Those reports are updated and certain flags come on them when someone's credit score goes below a certain level. If a builder or developer that was registered with us went into liquidation or went bankrupt and re-emerged, this is a small country, so we would know these people. If they applied to join our register again, we would do serious financial vetting on them. We would invariably require them to put up significant security, through cash or a bond to us. If they were men of straw, they would not be able to do that.
62. There are cases throughout Northern Ireland where developers have bought sites, got planning permission, put in the infrastructure and sold off individual plots. Historically, that has been a fantastic way for small builders to get started: a joiner or bricklayer buys a plot, services it, builds it up themselves, start to get a wee bit of a reputation and builds their way up. That is a very distinct industry in this country and is largely made up of small family firms, sole traders and small partnerships. Frankly, I love dealing with them. They are the best people in the country, and there is so much variety among them. They are suffering grievously at minute as you know.
63. In the case of a master developer selling off plots, he should have arranged a road bond, which should be there irrespective of what was happening with the individual plots.
64. **Mrs D Kelly:** Can this Committee have confidence about your financial checks and that you are alert to the ability of people to recreate themselves?
65. **Mr D Little:** Yes; even if somebody who has been with us for 20 or 25 years without a blemish on their record contacts us and says they are doing a new site and ask for a £200,000 road bond, we will do another financial check. Financial checks are not perfect, but we do the best we can to limit the risk we are taking. We do not charge for the bonds. It is not a profit-making enterprise.
66. **Mrs D Kelly:** In the case of those who appear to have broken faith with the people who have bought houses, is there a way in which complaints can be lodged with you?
67. **Mr D Little:** Yes, certainly. We are contacted regularly by politicians, including MLAs and councillors.
68. **Mr Dickson:** Thank you for your submission, which has been very helpful. As I said to the NILGA officials earlier, there is more than one player in this situation. One of the things I would like to know is where you think there should be a change in the statutory arrangements for bonds. You alluded to some already. You say that your bonds are not profit-making, but where do you get the resource from to pay a bond where a builder goes bust?
69. **Mr D Little:** We are authorised and regulated by the Financial Services Authority. We have to keep very substantial reserves, which need to be ever more substantial as Europe extends its tentacles. The money comes out of our insurance reserves.
70. **Mr Dickson:** How many bond situations in Northern Ireland for your clients are in default?
71. **Mr D Little:** I am not sure of the exact number. I asked for a report on the amount we have paid in the past couple

- of years, and it is well in excess of £300,000.
72. **Mr Dickson:** That would equate to roughly how many sites?
73. **Mr D Little:** I could not say. I can get that information for you.
74. **Mr Dickson:** It would be helpful to know.
75. **Mr D Little:** I suspect that, as with the Titanic, it is the tip of the iceberg.
76. **Mr Dickson:** So, you are not the only player in the field in relation to supplying bonds?
77. **Mr D Little:** There always have been builders and developers able to put down cash deposits instead of bonds. In the good days, builders and developers got bonds from their banks or through an insurance product. There are various types of bonds that NI Water and Roads Service will accept.
78. **Mr Dickson:** What extent of the industry do you believe to be covered in relation to bonds?
79. **Mr D Little:** Again, that is something I am not 100% sure about. I had a conversation with a friend in Roads Service a while ago and he indicated that it may be that we do one third, one third is from commercial sources and one third are still cash deposits.
80. **Mr Dickson:** So it would appear that roughly two-thirds of developments are not covered by your warranty.
81. **Mr D Little:** We are not the monopoly warranty provider.
82. **Mr Dickson:** That is very helpful background information. If we could have more of those statistics, it would be very helpful for the inquiry.
83. **Mr D Little:** As I say, if there is any further information I can give you, although some of it may be commercially confidential, I am happy to do that in the right circumstances.
84. **Mr Byrne:** Thanks, David, for your submission. My questions have been more or less addressed. However,
- as Dolores mentioned, there can be confusion for individuals who buy a house and are told it has an NHBC certificate, but, unfortunately, they think that covers the roads and sewers whereas it covers only the house. There has to be some clarification there.
85. **Mr D Little:** OK.
86. **Mr Byrne:** You slightly addressed this issue, but I want to go back to it. What percentage of the £50 million in bonds that are still live would be invoked and have to be paid out in compensation in the current climate? Lastly, where is the real bottoming out in relation to the problem of unadopted roads?
87. **Mr D Little:** It is virtually impossible for me to say what percentage of that £50 million is at risk. I have in my head the names of three or four companies with extensive bond exposure to us that I would be concerned about but it is impossible for me to say that at the minute.
88. **Mr Byrne:** With regard to the totality of the £212 million coverage since 1990, what is the totality of the payouts for the bonds that would have been invoked?
89. **Mr D Little:** Historically, we have had very low bond calls.
90. **Mr Byrne:** Very low, but there has been a problem [*Inaudible.*]
91. **Mr D Little:** Well, you cannot make a profit doing something for nothing. The record throughout the UK historically has been that bond calls are very low. It has been nought point nought-something of a per cent.
92. **Mr Byrne:** That begs the question whether there has been a reluctance by people who have the authority to invoke the bond?
93. **Mr D Little:** No; the situation is that nobody predicted the way the housing market was going to go here. Nobody did. The past five years have been extraordinary. Up until then, 75% of all bonds that we provided were totally cancelled. That indicates that the industry was dealing with its

liabilities. Even the bigger builders now are husbanding their cash flow very carefully. If the market improves, the problem of unfinished development roads will disappear. The rump will be cleared up by Roads Service calling the bonds and getting them done where the builders and developers no longer exist. Where the builders and developers do exist and market improvement happens, cash flow will improve and they will deal with it themselves.

94. The housing industry in Northern Ireland is largely made up of people who value their reputation more than anything else. Most builders work in their local area and, if they are to continue in business, they cannot afford to let their reputation be damaged. That is the biggest safeguard there is, in some respects.
95. **The Deputy Chairperson:** Thanks, David. This is a very complex issue and there may be occasion for us to write to you or speak to you further.
96. **Mr D Little:** I am more than happy to do that. Again, with respect, it is possibly not a complicated business. You can distil it to something very simple. I think we can make it more complicated than it needs to be. Thank you very much for your attention.

18 April 2012

Members present for all or part of the proceedings:

Mr Pat Doherty (Deputy Chairperson)
 Mr Roy Beggs
 Mr Joe Byrne
 Mr Stewart Dickson
 Mrs Dolores Kelly
 Mr David McNarry
 Mr Stephen Moutray

Witnesses:

Ms Claire Bradley	<i>Northern Ireland</i>
Mr Derek McCallan	<i>Local Government Association</i>

97. **The Deputy Chairperson:** I welcome the witnesses to the meeting. I invite you to make your presentation, after which members will ask you some questions. I remind you that Hansard is recording the session.
98. **Mr Derek McCallan (Northern Ireland Local Government Association):** First of all, I thank the Deputy Chairperson and the Committee for this further opportunity to amplify the evidence, both written and oral, that the Northern Ireland Local Government Association (NILGA) presented on behalf of the local government sector between January and March. Our substantive evidence in January, both written and oral, has been supplemented with additional evidence provided in March, at your request. You will be relieved to hear that I do not intend to go through that in detail, because you have that information. I just wish to amplify, if I may, some key points, because brevity and outputs, as this Committee has shown, are much more preferable to longevity and processes for the sake of it.
99. I thank the Committee for initiating this review. It is an example of the sharing of information and of listening and being listened to. A range of stakeholders, including NILGA, supported the wish for a review, which is an evidence-based, integrated form of two-tier government. So, I am glad that that exists in some quarters, and I applaud the review.
100. As I mentioned, I want to simply clarify and amplify some of the recommendations that we have already provided information on. I will do that by outlining some very brief bullet points, if you are content. NILGA called for a review of the current adoption of the Private Streets (Northern Ireland) Order 1980, to include protection against incomplete developments and give more powers of enforcement to the Roads Service and the Planning Service. We recommend that the statutory orders bond be strengthened and its level increased to guarantee the proper completion of roads by developers or, if necessary, Roads Service, so that residents — your constituents and councillors' constituents — are offered proper protection. We recommended that the Department for Regional Development's Roads Service encourages actively targeting developers who have responsibility for unadopted roads and streets to establish a time-bound, fine-oriented programme of compliance.
101. Since 18 January, as I mentioned, we have offered further information, as requested, relating to how divisional Roads Service offices maintain and prioritise backlog lists of roads that have not been adopted. The utilisation and prioritisation of those are extremely important. NILGA would like to offer the Committee assistance, if it may, by communicating the outcomes from the inquiry, perhaps through organising, again subject to your approval, some subregional outcome workshops to inform local councils, divisional Roads Service offices and other relevant stakeholders of what needs to be done and which organisation need to do it, in order to work together to resolve the issue of unadopted roads in Northern Ireland. The menu that we put forward

- is very simple. It is a “who, what, why, where, when, and how” menu to ensure that constituents and, in last place, the media understand that this issue is being dealt with by committed public servants, which I believe we all are, or at least should be. Within the engagement exercise, we propose the adoption of a protocol with that combination of public servants and organisations that should be committed to solving this.
102. This is not rocket science, and it is not a panacea. There are numerous precedents of local government and Departments working together. An example is the fly-tipping protocol, which I am sure every Committee member is aware of. Under that protocol, the menu of what has to be done is shared. There is a dynamic response to it, and the outcome is that the right organisation creates the right solution, and that is done once.
103. We do not want a situation like that which arose in Coalisland recently, where a 100-house scheme was not completed for reasons with which you are probably more conversant than I am. The developer went into liquidation. Fourteen houses were owner-occupied, and the balance of the land was seeping sewage into the area. Very public-spirited, dutiful members of three different agencies — council, Roads Service and the Northern Ireland Environment Agency (NIEA) — were looking at the problem, wanting to reach a solution, but wondering who would be indemnified to solve it. In principle, that is good government seeking a solution. In practice, we think that the menu of information and the protocol will solve that. The outcome is people all working for the same end: to improve the lot of citizens in Northern Ireland.
104. Bearing in mind that brevity is very important, I and my colleague Claire Bradley — who has worked with local government officers and a number of agencies to provide simple and effective outcomes to the inquiry, which we applaud you for instigating — are happy to take whatever questions we may be able to answer. We reiterate our thanks
- for your request that we are involved in this, because two-tier government is good for citizens.
105. **The Deputy Chairperson:** Thank you for the presentation. Before I bring members in, may I start by asking this: what role does building control have in this whole process?
106. **Mr McCallan:** The situation with building control is best illustrated by an example. If there is sewerage underneath an unadopted road, statute requires that building control officers play a role in solving that problem. So, it is not the road but the sewer. Specific reference is made to council building control officers, hence the need to work together on this. That is the role of building control officers. Building control officers across councils also think as laterally and creatively as their resources require. They have a job in statute, but they also think three-dimensionally and communicate with Roads Service and NIEA about other issues. That is my understanding of the legislative requirement of building control officers in councils.
107. **Mrs D Kelly:** Thank you for the presentation. Given that new legislation has come through the Assembly in relation to clean neighbourhoods, with more authority being given to local authorities, and now that RPA is back on the agenda, do you see any opportunity for councils to be given more statutory power to resolve some of these issues?
108. **Mr McCallan:** Yes; a contemporary, two-tier, local government/central government approach has to be welcomed. We should look beyond the literal responsibility. We should also look creatively at being properly resourced. We should look at expanding the role to ensure that resources, legislation and a proper design of that service is afforded to local government as a partner.
109. **Mr Byrne:** NILGA recommends a protocol, but is a protocol strong enough? Protocols can be fine, but there could be some sort of mechanism that is more effective in ensuring that a solvent development company carries out its duty and gets

- the roads and sewers adopted. In the event of a development company going into liquidation, at the moment it seems that there is an escape clause for everybody: the receiver, the banks and the former directors of the company. Do you have any thoughts on that?
110. **Mr McCallan:** I agree that protocols can sometimes not have teeth and not be enforceable. The protocol we are referring to is with the public agencies, but we have also recommended the strengthening of the bond and the capturing of that by the Roads Service from the bondholder should a developer, for good reasons or ill, not be able to fulfil it. I understand and support the comment made.
111. The protocol we are proposing is similar to the protocol for fly-tipping, as we are asking the agencies to both dutifully and enthusiastically come together to deliver this. Ultimately, however, there needs to be strong legislation and enforcement, as we recommended and as I am sure other stakeholders did, so that Roads Service are given real powers to move on this, should a developer renege, as has been the case in both parts of these islands.
112. **Mr Beggs:** You mentioned the instance in Craigavon, where three different agencies were looking at the situation. Are there fundamental problems with legislation, when someone can occupy a house that does not have a sewerage system? Was the occupant at fault for moving into the house when it did not have a sewerage system, or were the occupant's solicitors at fault? Some of the problems may be caused by the developer. Had the developer ignored all his responsibilities? The answer in this case is yes. Ultimately, it is very difficult to legislate for everything, but is there a fault in the legislation when someone could go into a house before there was a sewer? Does that need to be changed before we start to look at how we fix such situations when they arise?
113. **Ms Claire Bradley (Northern Ireland Local Government Association):** That probably happens most often when people buy new houses. In such cases, the buyers' solicitor will be furnished with an initial certificate to outline that planning permission has been granted for the sewers, the roads and whatever. It is only after completion that the solicitor is sought for the final certificate and the works are signed off. There is a question about the time period: do you build all the houses first or ensure the roads are in first?
114. **Mr Beggs:** I have heard of some situations in which sizeable developments are occurring off private roads, for which there are no bonds. Is there a particular problem with sizeable developments off private roads when there are no bonds, and do you have any suggestions as to how to solve it? If there had been a bond, the bondsman would have come in and put the sewer in.
115. **Ms C Bradley:** Your solicitor should have your bond in place, particularly if it is a new development, under the legislation.
116. **Mr Beggs:** You are missing the point. If a development is off a private road, you do not have to have a bond. If a development has fewer than six units in a road adjacent to an adopted road, you do not have to have a bond. A couple of people have contacted me who have gone into small developments right beside a long-established road, the road has never been finished and it has become apparent that there is no bond because there was no need for one, because the development was under a certain size. A similar situation has arisen with the road being unfinished. I am just trying to identify whether there is a problem with people occupying houses too early, or whether there should be another form of bond, even if the development is on an unadopted road, as another way of securing that the road will be finished. That way, even if it is not up to full adoption standards, at least there will be tarmac on the road and the sewers will be safe.
117. **Mr McCallan:** I will attempt to answer that question. The solution is a combination of tightening and widening the bond, to make sure that all of those

instances fall under the bond system. To go back to the member's earlier point, there is a gap in legislation. All legislation is interpretable. All legislation involves a range of people, from the homeowner — who, in my view, is the most innocent — to those who are professionally specialist and should, but do not always, spot everything, which suggests to me that there is an opportunity for the legislation to be tightened. As the member inferred, that would not be a panacea, but there would be legislation and a protocol and it would address the bond enforcement issues that have been referred to.

118. All that has been captured, and the issue is quite clear. Constituents have approached the member who asked the question, and many councils have approached us. In summary, my answer to those questions is that it can be solved. We should come together to do it once and do it right. We have exposed a problem. Your inquiry identified that problem. The solution is in our hands, but all those issues need to be developed in partnership. We are here offering that partnership and at least some of the solutions, but we cannot provide them all.
119. **Mr Beggs:** I say very clearly on record that there is a gap where sizeable developments off private roads can be developed and everybody assumes that that will be an adopted road, but there is no need for the developer to finish it to make it an adopted road and there is no bond. Some of these difficulties can also occur in smaller developments where there is no requirement for the road to be adopted. The innocent purchaser, who may be purchasing for the first time, may not be aware of the detail. I only learned of this detail in the course of this inquiry and after constituents approached me and I contacted Roads Service. There are some gaps that are not fully understood. We, as a Committee, ought to try to draw those out and help fill them.
120. **Mr Dickson:** Thank you for your presentation. I feel that it perhaps solves only part of the problem. It deals with the public sector side of things as regards protocols, but the other side to this is builders — I am reading a document from the National House-Building Council (NHBC), which provides a lot of the bonds — solicitors and, for many people, lenders. I note that, in some other European countries, the problem has been resolved by the local authority, presumably building control or the equivalent, issuing a “fit for occupancy” certificate that states that there is sewerage, water, electricity, street lighting, and a whole list of things. That meets your protocol argument, but it would require changes to the statute. Although a protocol is very valuable, we also need fundamental statutory changes, particularly with regard to new developments and the whole issue of what is adopted and what is adoptable.
121. NHBC tells us that the Department has made changes. Where previously Northern Ireland Water and Roads Service had a combined bond, there are now separate bonds. I know that it is not for you to answer, but I would like to be in a position to ask them why that happened. Did it come about because of the changes to Northern Ireland Water? Presumably, it did. Was it really necessary? Can we put it back together, or is it wiser to have the two things separate?
122. It is very welcome that the statutory agencies come together and get their act together. However, I would like to have heard NILGA's proposals on fundamental changes to statute. Would you prefer that a bank, building society or solicitor should be legally obliged to tell people that they are simply not allowed to occupy a property until the appropriate certificate is received from the local authority? Would you like that fundamental change to be made through legislation? Would you like other legislative changes in order to resolve these problems?
123. **Mr McCallan:** There has been reference to the legislation. Another member referred to our wish to develop the enforcement role of building control officers. If we move towards that through the protocol and engagement

- events, both the information that we have already provided and the technical information from group building control officers could assist in getting us to the point of advancing the occupancy clause that you refer to. From our point of view, if we were to assist in the co-ordination of further engagement, it would be a recommendation for us to pursue and look at the technical people in the sector.
124. **Mr McNarry:** Sorry for being out for the first part of your presentation. You are welcome, Claire and Derek. Maybe someone mentioned this, but you make reference to the National Assets Management Agency (NAMA), which I am pleased to see. Have you any work done on that subject? Are there any indications as to what problems may arise, and, if so, how they could be prevented?
125. **Mr McCallan:** Yes; as members will be aware, we requested information from a number of councils. The evidence provided previously to this Committee included representations from Antrim Borough Council's chief executive. My colleague Claire will hopefully be able to give you a summary of what was provided by our colleagues on that council.
126. **Ms C Bradley:** The issue was raised by Antrim Borough Council not on the basis of actual examples but more hypothetically. It was asked whether, in cases where a developer goes into administration and a development comes under the remit of NAMA, the bond could be drawn down to complete the works and whether it being held by a third party would be an issue. There was no definitive answer; it was more a theoretical example from the council.
127. **Mr McCallan:** There was a very strong expectation for us to assist in answering how that would be resolved. The NAMA reference was made because of the possibility of such a situation happening. However, as Claire said, it was not based on direct experience; it was based on people saying that the situation will happen and it needs to be sorted.
128. **Mr McNarry:** Is it our job or NILGA's job to get more information on NAMA and any situation like that, Chair? Is anybody contacting our Department of Finance and Personnel about that?
129. **The Committee Clerk:** On the back of the documentation that NILGA provided earlier and as part of the inquiry, we invited representatives from NAMA to come here to give oral evidence. That was declined, with officials saying that NAMA has no interest in respect of that. On the Committee's instruction, we wrote again to NAMA and pointedly put the question in respect of surety bonds, etc. NAMA's response, which is contained in the written evidence in members' packs, was:
- "Further to your recent correspondence in respect of the above, I can confirm that NAMA neither issues nor holds any surety bonds for works in Northern Ireland with reference to the Private Streets (Northern Ireland) Order 1980."*
130. So, on that basis, NAMA has declined to give evidence on the issue.
131. **Mr McNarry:** I do not want to dwell too much on this, and I suspect that NAMA might not respond, but is there any method by which we might request of NAMA a list of the sites that it is involved in?
132. **The Committee Clerk:** NAMA has indicated that it is not involved in any sites here and that it does not have anything under the Private Streets (Northern Ireland) Order 1980, which is —
133. **Mr McNarry:** It is involved in sites here; it is involved in land here, as far as I understand.
134. **The Deputy Chairperson:** David is right; we should do some follow-up on that.
135. **Mr Beggs:** If I heard the Committee Clerk correctly, he said that NAMA indicated that it does not hold any bonds. However, bonds are always held by independent third parties, so NAMA would not hold any bonds if it had got the sites via developers.
136. **Mr McNarry:** That is a good answer, Roy.
137. **Mr Beggs:** I am just pointing out that that is not an escape route for them.

138. **The Deputy Chairperson:** If members have no further questions, I will thank the NILGA representatives for their submission and offer of help. I am sure that, as we progress through the inquiry, we will be in dialogue or communication with you again, because we intend to come to some solid conclusions on all of this.
139. **Mr McCallan:** Thank you, Chair. We are here to help.

2 May 2012

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*
 Mr Ken Hunter *Northern Ireland*
 Mr Trevor Martin
 Mr Ian Wilson

140. **The Deputy Chairperson:** I welcome Trevor, Jonathan and Ian. Please give your evidence, and, hopefully, our members will ask good questions.
141. **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.
142. 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 161 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.
143. 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.
144. Homeowners, businesses and developers can apply to Northern Ireland Water under article 159 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.
145. 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.
146. 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.
147. That concludes our presentation. We are happy to take questions.
148. **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?
149. **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.
150. **The Deputy Chairperson:** Is it the lawyers' responsibility to make them aware?
151. **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.
152. **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?
153. **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.
154. **Mr Hussey:** It would be possible to calculate?
155. **Mr Hayes:** I suspect that the Department for Regional Development (DRD) could provide a tentative figure.
156. **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?
157. **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.
158. **Mr Dallat:** Should we be looking seriously at that?
159. **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.
160. **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.
161. **Mr McNarry:** You are in a warm house now, John, after that comment. [Laughter.] I concur with it all the same.
162. At what stage would a prospective house purchaser know whether article 159 application had been successful? Is it a case of putting the cart before the horse?
163. **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.
164. 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.
165. 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.
166. **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.
167. 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.
168. 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.
169. 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.
170. 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.
171. **Mr McNarry:** I have one more question. How crucial are septic tanks and developer-installed pumping stations to non-adopted roads?
172. **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 161 agreement is entered into, and there is a strong possibility that a 159 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.
173. **Mr McNarry:** Are there any instances of those types of management committees getting involved in the provision of a road?
174. **Mr Hunter:** Not to my understanding.
175. **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 161 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.
176. **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 161 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.
177. 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 161 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.
178. **The Deputy Chairperson:** Thank you very much for your presentation, Jonathan, Ian, Ken and Trevor. The advice was very practical.

2 May 2012

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 Ian McCrea
 Mr David McNarry
 Mr Stephen Moutray
 Mr Cathal Ó hOisín

Witnesses:

Mr Robert Dempster *Consumer Council*
 Mr Graham Smith

179. **The Deputy Chairperson:** I welcome Robert and Graham and ask them to make a presentation. Members may then wish to ask questions.
180. **Mr Graham Smith (Consumer Council):** Thank you for the invitation to present to you today. By way of introductions, I am Graham Smith, acting head of water at the Consumer Council, and I am joined by Robert Dempster, who is the senior consumer affairs officer at the council. I will make a few introductory remarks and then pass over to Robert, who has been leading the council's work since your inquiry was announced.
181. Our evidence today will develop the written submission that was provided to you in March. Simply put, our role is to represent the consumer. It is from that perspective that we have approached our work on the inquiry and that we will be providing evidence today. Buying a home can be an exciting, complex, stressful and daunting process all at the same time. For most consumers, it is one of the biggest decisions and financial commitments that they will make, and we should not overlook or underestimate the emotional investments and attachments to our homes. When looking at the topic of unadopted roads and sewers through

the eyes of the consumer, we split consumers into two rather crude but, we find, effective groups. First, there is the now, which involves the consumers who are living in properties facing problems with unadopted roads and sewers. The question about that is how we can resolve those issues. Secondly, there are the future consumers and buyers, and the question on that is how we can prevent the problems continuing to happen. I will pass over to Robert now, who will take you through the main body of our evidence.

182. **Mr Robert Dempster (Consumer Council):** Thanks very much, Committee and Chair. In general, the Consumer Council does not receive a great deal of direct contact from the public regarding unadopted roads. When we do, we normally refer them to the bodies responsible. In some cases that will be the Roads Service, Northern Ireland Water or the developers directly. However, we recognise that it is obviously a very important issue that has an effect on a lot of people throughout the Province. We fully support the inquiry's terms of reference, and we believe that it is very important to fully identify the scale of the problems and the number of consumers that are directly affected. Based on some research that we have done into the area, we have identified what we believe to be the factors requiring consideration and investigation, along with some possible remedial action that might help to alleviate the current situation. We are conscious that our suggestions may require further input from witnesses who have more practical and in-depth knowledge, such as Roads Service and Northern Ireland Water.
183. Occupied properties with no bonds should also be given consideration in the inquiry. The need for that is highlighted by recent events at an estate in Coalisland, where a number

- of properties were completed and sold with no sewerage provision. I think that most people will be familiar with that, as it was heavily reported in the media. Raw sewage was flowing into a nearby field close to the River Torrent, which is a tributary of Lough Neagh. Those properties were sold with no water supply or adequate sewerage facilities. As far as the Consumer Council is aware, the current situation is that a bond is in place for the roads at those properties. There is no provision for sewerage and water facilities and no agreement with Northern Ireland Water. We are aware that a local MLA and Northern Ireland Water have intervened to provide a temporary water supply for the residents, but Northern Ireland Water is not able to assist any further, because it does not have the powers to provide those sewerage works without a bond being in place. At present, under current arrangements, the responsibility for the sewerage and provision of water lies with the owners of the properties, who, as far as we are aware, were unaware of those responsibilities prior to purchasing the properties.
184. There are some possible causes of such situations. One point that is worthy of note is that current planning procedures require developers and builders to submit detailed drawings of road layouts and lighting under article 32 of the Private Streets (Northern Ireland) Order 1980. However, it is not mandatory for the same level of detail and comparative drawings to be submitted for drainage and sewerage at the preliminary planning stage. Situations such as those in Coalisland highlight gaps in the current procedure. For example, if you look at things such as the certificate of completion that Building Control provide, you will see that those are very detailed and look at the construction of the house but do not directly link in with the provision of external sewerage and road services.
185. We also believe that the inquiry, and any solution that comes about as a result, should give priority to areas where there is inadequate sewerage and drainage. They should be given priority in recognition of the environmental, public health and safety concerns that are inherent in having inadequate sewerage and drainage facilities. One of the risk factors with unadopted roads and sewers is that unadopted sewers can cause no ill effects for a number of years, but it is not until much later that they can cause problems such as flooding or environmental damage, which is when it is too late for a resolution. So, the responsibility is left with the homeowners.
186. The level of risk to buyers is dictated by whether the developers or original builders of the property are still in a position to complete any necessary works while a bond is in place. Where no bond is in place, the risk to consumers is very much higher still. For buyers at the moment, it is still a case of let the buyer beware. As far as we are aware or are able to find, there is no direct duty on the seller of the property to provide information on the provision of sewerage and drainage facilities at a property. When buying a home, most consumers will take it for granted that, if there is something such as a certificate of completion or initial surveys, essential services such as roads and drainage will be in place.
187. One possible solution would be to place responsibility on sellers to provide information about the provision of roads and sewerage and what the purchaser can expect. The energy performance certificate is an example of that duty to provide information. At present, if a property is being sold, information on its energy efficiency performance must be provided to any prospective purchaser. A similar situation could be adopted for the status of roads and sewerage. We also believe that, in instances where properties have bonds in place, and where they are occupied and pose a threat to health and safety, consideration should be given to assessing the risk and cost of the potential adoption of those sites, with, where possible, a means of recovery of the cost of said work from anyone who could be held accountable or

- responsible for the work that was done. It may require changes in legislation or policy to allow Northern Ireland Water or Roads Service to intervene in situations where there are health and safety concerns or a direct threat to public health or the environment.
188. Any solutions to this issue will require a multi-agency approach, whereby respective organisations work together and employ effective communication so that they can share information, which, in turn, can be relayed to the public. That approach could include stakeholders such as Roads Service, Northern Ireland Water, local councils, the Environment Agency, insolvency agencies and residents' groups. We are aware that Northern Ireland Water and Roads Service have already formed a working group to review unadopted roads and sewers. A similar approach has been adopted in the Republic of Ireland, which has led to the formation of the national co-ordination committee on unfinished housing. That committee is made up of a group of stakeholders, including banks, developers, local councils and residents' groups. It has drafted a code of practice through which each of the stakeholders signed up to an agreed set of responsibilities and approaches to the problem. Areas where there is that risk to health and safety have been prioritised. The committee has produced a guide for residents living in unfinished estates. In addition, each city and city council has been requested to establish an unfinished housing developments team as a central point of contact to focus on enabling resolution in the most problematic areas. If established here, such a working group would be very useful in prioritising sites where there is a health and safety risk, identifying problems and delays in construction work or the reclamation of bonds, and providing a platform for sharing information between relevant parties including, most importantly, residents of those estates.
189. Just to summarise some of the points that we made, any solution needs to prioritise occupied developments
- where there is a direct threat to the environment and public health and safety. We also suggest that a working group be formed that includes all the relevant stakeholders, that the properties for which no bonds are in place are identified and that a plan to resolve those is established. If possible, developers must submit plans for drainage and sewerage as part of their original application to the Planning Service. We also suggest that a duty of care be placed on sellers of properties to provide information on the status of roads and sewerage.
190. We hope that the Committee has found some of that information helpful. We in the Consumer Council would like to help with the ongoing inquiry and its results in any way that we can. We work quite closely with Northern Ireland Water and consumers in Northern Ireland. We do a lot of outreach work with the public, and we have an extensive outreach programme planned for the coming year. If there is any way that that can be a platform for sharing information with members of the public, we would be very glad to help. Thank you very much, and we welcome any questions that you may have.
191. **The Deputy Chairperson:** Just before I bring other members in, I have a question. You said that the number of unadopted roads is testament to the fact that the bond system is ineffective. What do you suggest should replace that?
192. **Mr Dempster:** As we said in our original submission, the current bond system would seem to be very effective. Builders must submit detailed plans for the construction of the work, and those plans are looked at throughout the investigation. However, we have seen situations where that system has broken down. Going forward, one of the really important things is to place a responsibility on sellers to provide information about drainage and sewerage. That will act as an incentive to developers and other people who are involved in the sale of houses. Members of the public would then be in a position where they would expect to get information about sewerage

and drainage. If you are a prospective developer or are selling a property, the incentive will be there to make sure that those things are in place and that the appropriate bonds are in place. Although there are different reasons for the situation in each estate, in some cases builders or developers have gone ahead with the construction of properties without having bonds in place, meaning that it has worked the other way round. The working group that we suggested, along with a responsibility on sellers, might help to counter that.

193. **Mr Dickson:** Thank you for your presentation. It has been very helpful to us this morning. To carry on from where you left off with bonds, do you believe that it would be helpful if we had a mandatory bond system for developments, meaning that a development could not be built without that being on the checklist? In other words, ground could not be broken until those things had been checked out. Likewise, at the other end of that process, building control or other stakeholders could be in a position where a certificate of fitness for occupation would be issued. That certificate would cover all those issues, including sewerage, roads and lighting.
194. **Mr Dempster:** Yes. The idea of a certificate of occupation would tie in with placing a responsibility on the seller. Our understanding is that, at the moment, everyone fulfils their individual role. Building Control does a great job, and Northern Ireland Water does everything that it can. However, there are gaps between the processes; therefore, something such as an enhanced certificate of completion or a fit-for-habitation certificate would be a potential solution. Mandatory bonds are another avenue that could be explored. However, the main thing is placing more responsibility on those who are responsible for developing and selling the house.
195. The education side is also important so that buyers know what they are getting into and can, therefore, make informed choices. However, the idea of a fit-for-

habitation certificate is very good, and it might be simpler than imposing direct bonds, as a balance has to be struck between holding back on developments, and we would not want to encourage that. Those are all excellent ideas and are along the same lines as our suggestion.

196. **Mr Dallat:** I have just joined the Committee, so you will forgive me if I ask a silly question. Thousands of homes across the North are the product of the financial collapse, and many people find that documents are incomplete, or they may be bankrupt or find that the National Asset Management Agency (NAMA) has taken over and, therefore, it is virtually impossible to sort out the sewerage connections and the adopted roads. It is even difficult to sort out the basic things such as building control. I am talking about all the things that are needed to get a proper regulated mortgage and so on. Do you have any idea of how those issues could become part of a system that would get over the problem that always existed with bonds but that has now been compounded by the awful problems of contractors going into liquidation?
197. **Mr Dempster:** There are problems with unadopted roads, and the complexity that you are talking about with companies going into liquidation and those sorts of things has necessitated this inquiry. As this is a very multifaceted problem with lots of different aspects, with for example, some companies going into liquidation while others have not, it would be really useful to go back to our suggestion about having a group of stakeholders that would include developers and Roads Service. That group could meet and discuss a list of those issues and try to find a way forward. Again, to refer to the national co-ordination committee, NAMA in the Republic of Ireland is part of that, along with banks and developers and the Republic's equivalent to the Roads Service. Essentially, a solution could be reached with all the different groups. Also, if residents' groups were involved, it would give a voice to the people

- who are directly affected. It would require a considerable amount of work. Nevertheless, if a health and safety risk were involved, there might come a point when a solution would have to be found with all the individual stakeholders, and those sorts of situations would be given priority. I think that would be the best approach. I do not think there is a simple direct answer.
198. **Mr Dallat:** Chairperson, I think that that may be useful in any report that we publish, because there is not a town or village across the North that does not have incomplete facilities caused by what has happened. Individuals cannot sort the problems out. Some corporate decision coming from the Assembly would be very useful.
199. **Mr McNarry:** You are both very welcome. You seem to give the impression that you know what you are talking about, so I just want to find out how much you know. I am trying to establish what research and evidence you might be able to pass on to the Committee beyond what you have written here. How many unresolved complaints on this matter have you engaged in?
200. **Mr Dempster:** The role of the Consumer Council in complaints deals strictly with issues relating to the provision of service by Northern Ireland Water and also by transport companies and utility companies. Unfortunately, we are not directly able to engage with complaints on this issue. Our remit for complaints is specific. For example, we deal with issues where a customer has complaints with Northern Ireland Water and they are unhappy with the outcome. In those situations, for the most part, for example, on properties where there is no bond, one of the main problems for Northern Ireland Water is that it is unable to act under the Water Order. It cannot go onto that private land and resolve it. Legally, the responsibility lies with the owners of the property. We are not in a position to take up a complaint in that case, because we cannot hold Northern Ireland Water to account.
201. **Mr McNarry:** Who would you go to with that complaint to get it served?
202. **Mr Dempster:** It would vary. That is one of the things that has made the inquiry very important, and one of the reasons that we are suggesting the equivalent of a co-ordination committee. Our consumer support team handles incoming inquiries. What would happen is that we would receive an incoming inquiry and would use our knowledge of how Northern Ireland Water's processes work to establish who is the best person to speak to. In some cases we might suggest that the customer may want to speak to Roads Service, Northern Ireland Water, their solicitor or the property developer, if they have an avenue for contacting them. The problem for us is that, at the moment, that is really all that we can do. We cannot take on an active complaint because the issues are too broad and there are too many different people. That is why we think it would be very useful to have a stakeholder committee or individual officers in each council area that people could speak to directly. They will have attended those meetings. They will have that knowledge and will be able to say that, in estate A, they are addressing a meeting with all of the relevant parties.
203. **Mr McNarry:** OK. It might be very useful if you could furnish us with at least an idea of what evidence you have been gathering, so that we are not dealing with hearsay.
204. **Mr Dempster:** Of course; I understand entirely. We have spoken directly to the Department of the Environment in the Republic of Ireland about the issue. We also deal directly with Northern Ireland Water on the issue.
205. **Mr McNarry:** I am nearly going to ask you another obvious question that you have not got an answer to, but you do ask a good, pertinent question about how many developers did not consult before constructing roads and sewers. Do you have an answer?

206. **Mr Dempster:** We do not have a figure for that, unfortunately.
207. **Mr McNarry:** Why are you asking that question? What put it in your head that you would ask us to find out?
208. **Mr Dempster:** We just feel that it is a very important question that needs to be addressed, if it is at all possible to do so.
209. **Mr McNarry:** I agree with the question. Whether the answer is none or hundreds, I do not know, but I think we do need to find out.
210. **Mr Dempster:** It could be quite difficult to find that out, but we think it is very important that it is found out. Again, it comes down to prioritising. If there are people occupying properties where there are no bonds in place and there is a risk to health and safety, but people are not aware of that or are not financially in a position to rectify that, it is very important that we find out what those are and then look towards a solution. The situation in England and Wales is that there are many properties that have been unadopted for quite some time, but sewerage and road services have been built to quite a good standard, so they do not present an immediate threat. Although it is an issue, it is not an immediate issue. However, with unbonded properties and where there is no adequate sewerage —
211. **Mr McNarry:** Could I be indulged for one last question? Thank you. The body that you represent — the Consumer Council — does excellent work, but, at other times, it sticks its nose in where it should not, but that is neither here nor there. What intrigues me in this case is that, like us, you are identifying a problem, and you certainly are not able to address a public concern, whereas other members have pointed out that people are in stress over this and do not know where to go. Where do you think the end of this line is? You have told us that you really cannot help them too much if they go to you. At this moment, where would I, as an elected representative who might have directed them to you, thinking that you would be able to do something, direct someone in my constituency who may be under stress with that problem?
212. **Mr Dempster:** I appreciate your comments. I will address the first part of your question. Although we are not able to offer practical help in dealing with the complaint and engaging with those people, as it is beyond our responsibility, we are able to provide information, very much like the information that we have researched here, as to who they should go to and what their rights are. Our consumer support team is very converse with a wide range of those sorts of issues. If someone comes to us, we would be able to offer them a degree of assistance. Not many MLAs have come to us asking for help in that situation, but if they did, we would be happy to engage with Northern Ireland Water on their behalf or work together.
213. **Mr McNarry:** Could this MLA ask you to send him out a pack of whatever you would have if he asked you, because I am asking you now?
214. **Mr Dempster:** Yes. At the moment, there is not a great deal of assistance that we can offer. We can offer practical information, and we can point people in the right direction. Although we cannot offer any direct information or hard facts on unbonded properties, for example, we are suggesting a way forward by having a group of stakeholders. Therefore, if we get a call in the future, we can speak directly to that group of stakeholders or refer the customer directly to them, and they will be able to give accurate and timely information on the situation.
215. **Mr Hussey:** Anyone who lives in a rural constituency will know that people move into housing estates as soon as a house is built. They do not have a road structure in place, and I do not know about the sewerage position. However, as the estate is being built, people are buying houses knowing that the road is not constructed and that the whole development is not finished. You have scenarios where the builder finishes and leaves, and the road is not adopted by

- Road Service. Until that road is adopted, the councils will take no action. Councils will lift bins on the public road but will not go into the estate. Clearly, there is no responsibility on Roads Service or Northern Ireland Water until the road is adopted. Rogue builders are the problem.
216. I accept some of the comments that you have made, such as having a certificate of occupation. A certificate of occupation would be an ideal situation if the estate was finished, but most of those housing estates are built piecemeal. Developers start off with one house and they make their few pounds. They then build the next house and so on. In some cases, the estate is not finished at all. It will be difficult to put the responsibility back onto the Department for Regional Development (DRD) or the Planning Service. When you are doing a specific contract, the Planning Service will bring in DRD as a consultee and will say that a road has to be done and x, y and z, and they will not adopt it until it is up to that standard. Then there is the bond. Is it not the case that we are not going to have the bond enforced in some of those instances? We really have to go right up to the courthouse door before that happens. The biggest problem is the enforcement of the bond.
217. **Mr Dempster:** That is very true. One of the things that we would say about something like a certificate of completion is that, although it does not resolve all of those other aspects, it puts the ordinary person who is purchasing that property in a position where they can make an informed decision about that and they are clear about who is responsible. There is the risk that it might make a purchaser more reluctant to purchase a property, although it increases the incentive on the builders and developers to make sure all those things are in place. Something like a certificate of completion, which would include information about the provision of roads and sewerage, would not be a complete solution to the whole problem, but it would be a very important part of that.
218. **Mr Hussey:** I can see that working when you are building one house for one person on a site. I cannot see it working in an estate, because, clearly, as I said, you start at one point and you work your way around, and it is not until you get to the end that the estate is finished. I think there would be problems with that and, unfortunately, it is going to be your problem, as long as you have a road builder who is prepared not to put sewerage in at all, as in the situation in Coalisland. That was beyond belief, and, in those circumstances, at no point could DRD take responsibility, because everything is at the cost of the public purse. Is the suggestion that the public purse should take that over?
219. **Mr Dempster:** We are not suggesting that that is the case in all situations, but, if there are no other avenues to explore and there is a direct risk — to use the example of Coalisland, where there is pollution going into the watercourses and there is a direct threat to health and safety — then a decision would have to be made if there is no other recourse to repair that.
220. I refer back to the idea of having a co-ordination committee on those kinds of issues, so that it can analyse each of those issues one at a time to see what the best possible position is. There may be a point at which there is no other avenue, and where there is a direct risk to safety, there would have to be some sort of intervention. At the moment, Northern Ireland Water and Roads Service do not have the powers to intervene in those situations, so that might be something that needs to be facilitated. Again, that would have to be investigated to the point where there were no alternatives, but there may well be situations where that is the case.
221. **Mr Hussey:** I have one final point. My opinion is that, if we are going to go down that line, all of the developer's plans should be laid on the table in advance, and the responsibility should rest with the developer. If we have to then go to a higher bond, that is what we do, because the public purse quite simply cannot afford it.

222. **Mrs D Kelly:** To pick up on your latter points, a particular case that my colleague councillor Sharon Haughey has been dealing with is Loughadian Brae, Bann Road in Poyntzpass, where no permission was sought for a sewer at all. The pumping station breaks down and sewage sometimes runs into the canal. How is your role distinct in terms of holding other accounting agents, for example, NIEA or the water service itself, to account in relation to the bond issue? You said that there may be a lack of a legislative framework. Are there any specific legislative measures that you think the Committee should be endorsing? Given your research remit, have you looked at examples of best practice elsewhere, and will you indicate those to us?
223. **Mr Dempster:** One definite legislative change or change in procedure that we could recommend is something that we have referred to in our statement about the requirement for builders, during planning procedures, to submit drawings for roads and street lighting but not sewerage and drainage. That is one possible change that could be included. There is also the idea of placing responsibility on sellers, or a certificate of fitness for habitation could be another possible idea.
224. In terms of best practice in other areas, in England and Wales the situation is quite different. There are parallels, but, in October 2011, in England and Wales an Order went through that adopted all sewerage and drainage that had not been adopted up to that point, but it did not cover roads. At the moment in Northern Ireland, it is not possible for Northern Ireland Water to adopt sewerage and drains unless they have been adopted by Roads Service. So there is a degree of difference.
225. As to the success in England of adopting private sewers, that was done in October 2011, and there is not really any information on that. From the point of view of consumers who live in those areas, it has obviously been good to a degree, but there is a massive cost involved, and that is being passed on through bills to consumers. That is one avenue that is being explored in England, where the situation is proportionately much greater even than it is here. I think that there are something like 40,000 unadopted sewers, some of which have been unadopted for —
226. **Mrs D Kelly:** In England?
227. **Mr Dempster:** Yes.
228. **Mrs D Kelly:** Do you have any information on the number of unadopted sewers in Northern Ireland?
229. **Mr Dempster:** No. We do not have any information, other than the information on the unadopted roads, which has been provided to the Committee. We have not been able to find that information. Possibly, that is a question to which Northern Ireland Water would be able to give a more specific answer. Again, as was pointed out by another member of the Committee, it is quite difficult to establish the number of unadopted sewers and roads where there are no bonds in place, but it is important that we do establish that.
230. **Mrs D Kelly:** Perhaps those are a couple of questions we could put to Northern Ireland Water.
231. **Mr Lynch:** Could you expand on the Southern Ireland model and the role of the banks in it, which you mentioned? How far have they got on in practical terms? I live very close to the border, so I am aware that there is a major problem there as well. If there are not sufficient funds to finish a particular development, who finances that? Have they come to that point?
232. **Mr Dempster:** The co-ordination committee, as was said, meets all the various stakeholders. It has drawn up a code of practice, which is overseen by the Department of the Environment. We have some information on that, but you can get information on the code of practice and what is involved on the Environment Agency's website.

233. I cannot give you any examples of practical successes, such as estates where they have carried out work. However, due to the fact that they are working with all the different people involved, like the banks, developers and residents, I think that any outcome of that can only be positive. As for ultimate responsibility, if they find a development where there is no developer anymore and the developer has gone into liquidation and there is no other avenue to repair that, they prioritise that development, depending on whether there is a direct risk to public safety. If there is a direct risk, the burden of that cost is placed on the Department of the Environment, which will engage in action to repair that.
234. **Mr Lynch:** Are there lessons that we could learn from that?
235. **Mr Dempster:** I think it might be useful if, as a result of any inquiry or if there is any further work, we were to work more closely with them and see what direct results they have achieved in response to that.
236. **The Deputy Chairperson:** Graham, Robert, I thank you for your presentation and for answering our questions.

2 May 2012

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 Ian McCrea
 Mr David McNarry
 Mr Stephen Moutray
 Mr Cathal Ó hOisín

Witnesses:

Ms Anne Brown	<i>Law Society of</i>
Ms Imelda McMillan	<i>Northern Ireland</i>
Mr Brian Speers	

237. **The Deputy Chairperson:** Imelda, Anne and Colin —
238. **Mr Brian Speers (Law Society of Northern Ireland):** I am afraid not. You have got Brian Speers.
239. **The Deputy Chairperson:** Our speaking notes have not been updated. You are very welcome. I ask that you make your presentation, and then there will be various questions from Committee members.
240. **Ms Imelda McMillan (Law Society of Northern Ireland):** I will just formally introduce Anne Brown, the chair of the conveyancing and property committee; Brian Speers, the senior vice-president of the Law Society; and myself, Imelda McMillan, president of the Law Society. We would like to thank the Committee for inviting the society to provide oral evidence today. We commend the Committee for undertaking this inquiry into unadopted roads, which have a wide range of implications for many homeowners. It is an issue that the Law Society is live to. It is of relevance to practitioners who act for purchasers and those who act for vendors. In my opening statement, I will describe the process that a solicitor goes through

in advising a purchaser on the issue of roads.

241. When acting for a purchaser, a solicitor will identify the position with regard to the roads on the entrance leading to the property from the nearest highway maintainable at the public expense. This is of particular relevance when the house forms part of a development. If the roads have not been adopted, the purchaser's solicitor will ascertain whether a road bond has been obtained under the provisions of the Private Streets (Northern Ireland) Order 1980. If the roads have not been adopted, it is usually the case that a bond is in place. I understand that the Committee's inquiry is focusing on roads where a bond is in place. Therefore, I will just briefly mention that there are certain developments where the roads are and will be maintained and remain private. In such circumstances, those living on the road will maintain the road either individually or through a management company. If a road has recently been constructed, there is usually a covenant and indemnity by the developer to make up the road to a required standard.
242. Returning to circumstances where a road is determined for adoption, it is the developer's contractual obligation to bring the road up to adoption standard and to support that obligation by procuring and providing the purchasers with a road bond. In certain circumstances, previous to the economic downturn, a purchaser may have completed on a house where a road bond was not available at the time of completion. In those circumstances, the purchaser's solicitor would generally have retained a certain amount of the purchase moneys until the road bond was produced and obtained an undertaking from the developer's solicitor to produce the road bond once it would become available. Such arrangements were entered into when

- the housing market was buoyant and purchasers were keen to complete on deals, as house prices were increasing on a daily basis. In the current market, a client should proceed with extreme caution if a road bond is not available at the time of purchase. The society is currently reviewing the matter, and will be providing further guidance to its members in the near future.
243. Where a road bond is in place, a purchaser can rely on this as a safeguard that, should the developer fail to construct and complete the road or street, the Department for Regional Development can call in the bond and use the funds to complete the road works to an adoption standard. It is important to note that home purchasers and their solicitors do not look behind a road bond.
244. The research commissioned by the Committee highlights that there are a significant number of unadopted roads, many of which were constructed some time ago. In light of this, the society considers that the Committee's inquiry into current bonding arrangements is timely. It is vital that purchasers can have confidence in the system of road bonding to ensure that they can purchase and sell their homes in the knowledge that there is proper access to and from their home.
245. There are clearly a number of developments throughout Northern Ireland where a road bond has been in place for a significant period and yet the road remains unadopted. That could have implications when a homeowner seeks to resell their home, as the new purchaser may be concerned that the moneys held in the bond will not be sufficient to meet the cost of developing the road to the appropriate standard. The society suggests that the Committee continues to carry out further research into the problems that homeowners face in developments where the roads are unadopted. The fact that a road has not been adopted will almost certainly mean that the sewerage system will not be adopted. The society is aware of a number of developments
- where this has created significant problems for homeowners.
246. The society is also concerned that there is limited redress open to a homeowner in a development where, despite bonds being in place, the roads and sewerage system remain unadopted for a significant length of time and problems arise. In such circumstances, an individual can seek the assistance of the solicitor who advised them when they purchased or seek the assistance of their local MLA, who can make enquiries on their behalf and raise the matter with Roads Service and NI Water. However, there is no formal procedure in place for homeowners to raise such matters with the Department or NI Water. The society considers that the development of such a procedure would be helpful and should be given consideration. The society suggests that when a certain number of residents in a development raise concerns with the Department or NI Water, that should lead to an investigation of the situation by the Department and NI Water to determine whether the developer is progressing with the construction of the roads and the sewers in an appropriate manner. If they are failing to do so, calling in the bond should be given consideration.
247. The society also suggests that the Committee may wish to consider whether it would be appropriate to encourage the Department and NI Water to carry out periodic inspections of works more frequently to ensure that they are being carried out in a satisfactory fashion and to an appropriate timetable. The reports of such inspections could be made available to homeowners. Where problems arise, they could be addressed either by calling in the bond or requiring the developer to carry out remedial work. If no problems arise, homeowners can rely on the report provided by the Department and NI Water and refer to it if they seek to sell their home. That will provide any prospective purchaser with an assurance that the roads and

- sewerage systems are being developed appropriately.
248. It should be noted that the developer's pack produced by Roads Service refers to regular inspections payable by the developer. The Committee may wish to identify when the last inspection was carried out on each of the 2,732 unadopted roads in Northern Ireland.
249. The society considers that there is a general need to educate members of the public on their rights and responsibilities when purchasing a home. Committee members may be familiar with our leaflets on buying and living in an apartment and buying and living in a development with common spaces, which seek to augment the advice provided by solicitors at the time of purchase. The society suggests that the Department and NI Water produce information leaflets for homeowners living in developments with unadopted roads and sewers.
250. When homeowners move into their property, particularly when it is in a partially completed development, it is important that they ensure that their developer complies with his or her obligations with regard to their home and the development generally. If there appears to be a delay on the part of the developer, it would be cost-effective and prudent for the residents to address the matter collectively. To assist them, the Department and NI Water could establish reference points or an advice line on what to do when an unadopted road or sewerage problem arises. In respect of roads and sewerage systems that are bonded, homeowners must be able to raise concerns with the Department and NI Water. Where progress is not being made by the developer, appropriate enforcement action by the statutory authorities must be taken. The Department's and NI Water's apparent reluctance to do so may have led to circumstances where the funds provided by the bond no longer cover the cost of the required works to the roads. The homeowner should not be responsible for that. They have relied on the presence of the bonds when purchasing their home and on the due diligence of the Department and NI Water in overseeing the construction of the works. Any shortfall must be met by the Department and NI Water. To conclude, we recommend that there be regular, obligatory inspections prior to the adoption of roads and that adequate resources be put in place to ensure the timely adoption of new roads in developments. We also recommend that formal procedures be put in place to enable residents to complain about the unadopted sewers and roads. Road bonds should include an inflationary rate to reflect the fact that bonds may not be enforced for years after they were originally introduced. Article 11 enforcement action should be taken in a more timely fashion. Finally, a more joined-up approach is needed between the local authority, Roads Service and the water service, with clear, predetermined protocols between each agency for the adoption process, their role in that process and their shared role in it.
251. That concludes our opening statement. We are more than happy to take questions from you and your colleagues.
252. **The Deputy Chairperson:** Thank you for your presentation. What changes to legislation would you like to see being introduced to deal with unadopted roads and services?
253. **Mr Brian Speers (Law Society of Northern Ireland):** I will deal with that. I endorse our president's opening comments and agree that this is a very timely and worthwhile inquiry by the Committee. On preparing to speak today, it seemed to us that the legislation is actually not bad. There is an obligation to procure a bond before the commencement of development. The bond documentation has a requirement for the developer to pay an amount to ensure that inspections take place. The Department's own guidance suggests that there will be regular inspections, and it occurs to us that, if the current regime were applied, there would not be the present situation. Where legislative change is concerned, we think that

- proper compliance with the existing regime would serve to eliminate most of, if not all, the types of problems that your constituents and our clients are experiencing.
254. **Mr McNarry:** Thank you. You are very welcome. I have usually found your advice very useful in the past. Few are escaping on this as far as the person who is in the mire on it is concerned. Some constituents of mine will point to their solicitors who took them through the pictures of the property in question. When there is a problem, they then go back to the solicitor, who does not want to know, wants to walk away or tells them to go and get advice elsewhere. I think that you should take that on board, because that is what the public are telling me. The after-sales service is not good in some instances. Of course, we only hear of the bad cases; we never hear about cases where a solicitor was very good to a person.
255. My question is similar to and follows on from the Deputy Chairman's. When their clients who are caught up in this situation go back to them, what advice do you think solicitors should be giving to them? On this particular issue, are you aware of any current court cases pending or under consideration? Is that the type of advice that you would give to clients? Finally, do you have a record of the number of your members who have clients with the problems that we are talking about?
256. **Ms McMillan:** I will deal with the second and third elements of the question. We do not have specific records from our members about the number of problems that their clients face if the clients have approached them about those issues.
257. **Mr McNarry:** Will you write to them and ask them and then pass that information back to us?
258. **Ms McMillan:** Yes, we have a very good communication system with our solicitors. We send out information to our members on a daily basis. That is feedback that we could ask them for, so we will take that on board.
259. So far as court cases are concerned, I am aware of one situation. I was made aware just this morning that there is a court case pending. The court case pending is due to the fact that a road bond has been revoked by Roads Service.
260. **Mr McNarry:** That is very interesting, without —
261. **Ms McMillan:** I cannot go into any further detail on it, but that is the indication.
262. **Mr McNarry:** Could you not talk to somebody out in the corridor and give us a nod about what it might be? It might be helpful if we had a nod to follow it, just to see how long those court cases take. However, our inquiry might be well done by the time they get it over.
263. **Ms McMillan:** We checked with our client complaints committee, which deals with complaints from the public about the services that they received from their solicitors. The committee's report said that it had no complaints regarding failure of advice on road bonds or article 161 agreements.
264. **Mr Speers:** I will respond to the first question, which was, I think, about the advice that solicitors give. A fairly standard form of developer's sale agreement has evolved. A purchaser in a new housing scheme would enter into a building agreement and an agreement for the transfer of the land. There is a very clear contractual obligation in the building agreement for the developer to build in accordance with planning approval and building control approval and to ensure that all statutory obligations are complied with. Those statutory obligations include entering into a road bond. Contractually, really all that a solicitor can do between a purchaser and a developer is to make sure that rights and obligations are created and to make sure that, if necessary, they can be enforced. Therefore, the society feels that the contractual framework holds a developer to account in delivering this essential infrastructure. I have asked to see my own developer clients' copies of their bonds for NI Water and

- Roads Service. The language in that documentation states very clearly the obligations that are imposed on developers to build in accordance with approved plans, to comply with the private streets legislation, to pay for an inspection regime and, on top of that, to stand liable to forfeit a substantial amount of money, which is assessed by the Department as what it must deem presumably appropriate to finish the road if the developer does not adhere to his or her obligations.
265. **Mr McNarry:** I understand all that, and I am grateful to you. However, that makes it all the more surprising to me that there are not more and more court cases pending when such advice is given and is obviously not adhered to by anybody on the other side. It would appear to me that that would be the natural direction for those poor people who are caught. That may, perhaps, be the only route open to them, instead of their sitting there with nobody really trying to help them, as they are all caught up in bureaucracy and passing the parcel.
266. **Mr Speers:** A lot of the problem is that the target for the court case is no longer the developer but the developer's administrator or the developer's trust —
267. **Mr McNarry:** It does not matter who it is, surely, as far as the public is concerned. You may give us a legal definition of it, but Joe Public just does not care.
268. **Mr Speers:** It does matter, with the enforceability of the right. If you have a developer, and an administrator has been appointed by their bank, there are no resources available behind that developer. Therefore, your target is not directly to the party with whom you have contracted but the system in which you are caught up. That is why our president suggested that article 11 in the private streets legislation enforcement machinery really ought to be used more frequently. It would also be helpful if there were some mechanism for a purchaser to trigger such action.
269. **Mr McNarry:** Maybe we need to legislate on that here.
270. **Ms McMillan:** We would be happy to work with you if you were to legislate.
271. **The Deputy Chairperson:** We may move in that direction.
272. **Mr McNarry:** We will negotiate a fee, then.
273. **Mr Dallat:** It will all happen in due course, I am sure. I even still believe in Santa.
274. It seems that you are suggesting that article 11 is something that, perhaps, your members should know a bit more about. Do they know about it?
275. **Ms McMillan:** Yes, our members would be aware of the enforceability rights under article 11.
276. **Mr Dallat:** You said that you communicate with them on a daily basis. I suggest that, in the interest of the many people I know who are caught up in this, you make your members aware of that immediately. I come across too many of them who simply walk away from the problem. That is compounded by the fact that — I am not sure whether you approve of this — your members charge up front fees of maybe a couple of thousand pounds before starting the work. They then find that the developer has gone into liquidation, and they go away from it. It then comes back to the MLAs to do their best to try to sort out the mess. Sometimes it is possible to do that, but we do not have the enormous legal clout that you have. I know that it is our inquiry, but you have an enormous role to play in this. If I sound a little angry, it is because I have images of people in individual houses in small housing estates who have been left in the lurch by your members who have totally let them down.
277. **Mr Speers:** I think that it might be more accurate, Mr Dallat, to say that they have been left in the lurch by the builder, who has failed —
278. **Mr Dallat:** Sorry; I am being deadily accurate, I assure you.

279. **Mr Speers:** — to deliver their contractual obligation to build and comply in accordance with their statutory obligations. I think it quite a stretch to say that members of the solicitor profession have something to do with incomplete housing developments, which have been caused as a result of the recessionary times, lack of available capital and a loss of confidence in the housing market.
280. **Mr Dallat:** You are making the case for me. There is a level of arrogance to that response, which will not help this inquiry. Your members can do a lot in this, but they walk away from it. They get the loot and head off when there is a problem. I am sorry, but that is the truth. I have the evidence. If you want it, you will get it.
281. **Ms McMillan:** We would like to see the evidence of that, Mr Dallat. It would be very much appreciated if you could send that —
282. **Mr Dallat:** Are you telling me that you are not in control of your own organisation and that you do not know what your members are doing?
283. **Ms McMillan:** We do —
284. **Mr Dallat:** No, you do not.
285. **Ms McMillan:** — but we are not aware of the instances that you are explaining. What we would say is that, generally, in conveyancing transactions, fees are charged not at the start of the transaction but usually on completion of the transaction.
286. **Mr Dallat:** Chairperson, I do not have to go any further than my own family on that one. End of story.
287. **Ms McMillan:** That is perhaps your personal experience, Mr Dallat. However, generally, we are not aware that the profession operates along those lines.
288. **The Deputy Chairperson:** John, if you have that type of evidence —
289. **Mr Dallat:** I will go back and talk to the residents who were left in the lurch.
290. **Ms McMillan:** Yes, we would be very glad if you wanted to direct any specific cases to us. We will investigate those for you, Mr Dallat.
291. **Mr McNarry:** I agree entirely with much of what John said, but these people have very kindly come to give evidence to us. In many cases, if you sit there, you give as good as you take. However, it is important to our inquiry that the evidence that they give is very much usable and that they work with us. We do not want to be distracted by what are, if you like, alleged failures, which we all deal with. What I am saying is that you should take note of what we are saying. It is not just him and me who are hearing about that. There are 108 MLAs in this place, and it has been picked up that the problem is quite widespread. However, that is a separate issue that might help the thing at the end of the day. If it helps my constituents get good advice, we would all be happy.
292. **Mr Dickson:** Thank you for your presentation. You indicated in your opening remarks that, from your perspective, there is probably not a lot wrong with where we are, but it just needs the Department or appropriate utility authorities to actually do what the legislation says they should. I find that somewhat concerning. Everybody else who has given evidence has been able to point to other areas where they genuinely feel that there is a need to make a much more substantive change than just to say, “It is not broken; we just need to enforce it.”.
293. We know that there is a statutory obligation to have the bond in place. Nevertheless, you told us that your members usually check for that. The words you used were “usually” and “may”. You gave us an alternative scenario of retention. How on earth could one of your members become involved in retention when there is a statutory obligation to have a bond? You have a duty of care to your client, so why would you step outside that when there is a statutory obligation on your members to do that?

294. I understand the concept of retention, but if I were involved in the development of three or four properties, or maybe more, and my solicitor said to me that they were going to hold a retention on my behalf, the other solicitor could be Joe Bloggs's solicitor or next door's completely different solicitor and could decide that he does not want to recommend that to his client at all. That does not seem to me to be a very satisfactory way of dealing with the matter. We have a statutory obligation. You have said that it is there but that the statutory authorities are not enforcing it sufficiently. So, I would like you to try to address those areas that you think could be strengthened beyond simply using the current statutory framework.
295. Secondly, and briefly, the information that you gave us about what might need to be done to enforce the bond was very helpful. What is the trigger point for that? I suggest that you and the Department, together with residents, might want to give consideration at that point to some form of arbitration that could be binding on the parties prior to going to court. It would be substantially cheaper for your clients.
296. Finally, will you address the area of what I might describe as old developments? In other words, I might be selling my property and buying a house in a development that looks to me to be completely finished but that might have been there for 20 or 30 years. What diligence do you have in checking that out for me? It seems to me that there are quite a lot of old properties and lane ways and so forth that people buy in to, but all of a sudden they discover that they have appalling responsibilities for sewers and things like that. They discover that one of the reasons that the house is being sold is because a big lorry went up the driveway and collapsed the sewers. They will then have to pay their share of quite a few thousand pounds to have that repair work done, not knowing that the other residents in the street have already decided that they are not going to be paying either, so they are all just left with a collapsed sewer. That this is a genuine situation that, as an MLA, I have experienced.
297. **Ms McMillan:** Mr Speers will deal with the first and second points, and I will deal with the third. It is really a resale at that stage, because you will have already had a person in occupation of the property, and then it would be sold.
298. **Mr Dickson:** It could be 50 years, for all you know.
299. **Ms McMillan:** It could be 50 years. At one stage I lived off an unadopted road in the Newtownabbey area, so I know exactly where you care coming from. We had to contribute regularly to the upkeep of that road. It will be evident, because, on a sale, the seller's solicitor is obliged to provide property certificates and searches. I know that the witnesses who gave evidence previously commented that that should be important. However, we actually do that at the moment. So, there is a requirement under our regulation to provide for property certificates and searches at the start of a transaction. They are provided to the purchaser's solicitor.
300. **Mr Dickson:** Would that also contain actual, of-the-moment, live information about, for example, a collapsed sewer that others may be aware of but that the vendor may not want to tell anybody about?
301. **Ms McMillan:** It may not. We need to look at the property certificates and speak with the property certificate department about that. We are talking to that department generally about the amalgamation of all the property certificates into one. We think that that would be beneficial, because some would go by the wayside and be missed. By and large, the property certificate should show that the roads and the sewers are unadopted. That is an immediate flag. There are also pre-contract enquiries that the vendor responds to. Those should indicate whether there are difficulties with collapsed sewers or problems like that. If they have failed to do so, and there

- are collapsed sewers that they were aware of but did not disclose, you have a remedy against the vendor.
302. **Mr Speers:** As far as legislative change is concerned, I think that we said that it might be worth looking at the opportunity for individual owners to have a direct source of access. At the moment, the legal relationship is between the developer and the statutory agency, whether that is DRD, the Roads Service or NI Water. The Private Streets Order, which is quite an old piece of legislation going back to 1980, says that the Department may, by notice in writing served on the person appearing to be the responsible person, serve the appropriate notice. That, therefore, seems to suggest that there is an initiative required by the Department, whereas, actually, your constituents, our clients and the purchasers are experiencing the problem. That is definitely an area worth exploring.
303. So far as the resolution is concerned, it is interesting that the NI Water bond has an arbitration clause. Wearing a slightly different hat, it is of great interest to me to see how effective resolution of this type of dispute and these types of complaints could be achieved with minimal court intervention, which can bring about delays and uncertainties and can take you into quite a complex area where the person seeking to enforce the rights is not, in fact, the person who made the contract in the first place.
304. **Mrs D Kelly:** Thank you for your presentation. A number of your points were quite clear and easy to follow. However, I have to pick up on Mr Dallat's point. In the case that I raised earlier — that of Loughadian Brae in Poyntzpass — I am given to understand that a case is pending in the High Court in June in which the solicitor is one of the named respondents in the suit by one of the residents. So, I am surprised that you are unaware of that. Certainly in my constituency, I have seen people take to the streets to protest at the failure of the Law Society to routinely regulate its own profession. They find it very much a closed shop. That is
- the wider perception of many of the people who come into my office. Only three weeks ago, I was stopped in the street by someone who has found that they have an uphill battle in getting anyone to listen to their voice and to the concerns that they have about their representation. Deputy Chair, you will recall that, at the early stage, when we were setting the parameters of the inquiry, a former member of the Committee said that the final arbiter in the defence of people's rights was, indeed, the solicitor. Therefore, I am shocked to hear that there are not more cases before you on the actions — or inaction — of a number of your members.
305. If I could just correct you. You mentioned that this has happened in a time of recession. However, when times were good, developers and everyone else were trying to get houses out as quickly as they could, so the checks were not made then either. You are able to set out very clearly the responsibility and, in some cases, how the legislation is, in many ways, fit for purpose and about the implementation of the responsibilities of the water service and Roads Service. However, solicitors have still allowed sales to go through without, it would appear, checks having been made. If you come to my constituency — or, I am sure, anybody else's — without having to travel far from my office, I could bring you to a number of estates where an absolute mess has been left. How on earth anybody was advised by their solicitor to go ahead with the sale, given the situation in which they now find themselves, is beyond belief.
306. **Mr Speers:** If I could simply try to repeat what Mr McNarry said. We have come to assist the inquiry into unadopted roads. I regret that, in springing to the defence of my colleagues in the solicitor profession, that might be regarded in any way as inappropriate. However, it is a surprise to find that we are currently facing complaints about a matter that is entirely different from the terms of reference of this inquiry, in which the conduct and performance of solicitors

- is called into question. We are open, Ms Kelly, to providing information. The society has a client complaints procedure. There are delicacies between a complaint about the performance of a solicitor and possible allegations of negligence in the advice of a solicitor, which is a different matter, and I do not think it is appropriate to comment on either the case to which you refer or more generally. The solicitor for a purchaser creates a contract with the developer. Such a contract can be provided to the Committee. The terms of those contracts are very clear in setting out the developer's obligations, and any purchaser would expect to see those obligations in the document. One of the problems with a building contract is the length of time between which the contract is entered into and the provision of the finished article. That is because various events can occur in that period, and you are, therefore, left with a legal right. The fact that one party to a contract does not behave in the way that they should does not mean that the contract was wrong. Similarly, I respectfully suggest that it does not mean that it was wrong for the purchaser to enter into what has been, after all, a standard contract for a long time.
307. The current situation has not arisen historically. In my view, it is very much a response to developers' leaving developments incomplete, because they have gone out of business and have insufficient funds, with the result that the public purse is exposed to any shortfalls in demand and is then required to follow up on reclaiming bond moneys. To me, that is the only solution if a building company does not exist any more. The bond system must be recalled, and those moneys must be applied to try to put right, in so far as it is possible, the deficiencies in the incomplete scheme.
308. **Mrs D Kelly:** In my almost 20 years as a public representative, in good and bad times in the construction industry, I have had to chase developers, Roads Service and the water service to complete developments. I reiterate that, when the terms of reference for the inquiry were being looked at, one member of the Committee, who has now left, said that the solicitor was the final port of call for any resident. That is all that I am saying. That is what someone said. I do not know whether you accept that. One member of the Committee felt that strongly and was suggesting to other members that that is who we should be telling our residents to chase.
309. **Mr Hussey:** Imelda, before I go a little bit wider, in your opening remarks, you said something about the fact that any shortfall must be met. I got only part of it down, so can you give me that paragraph again? It was towards the end of the document.
310. **Ms McMillan:** I was saying there that, because of the length of time involved and the fact that the enforcement procedure has not commenced, the moneys in the bond are not sufficient. Therefore, the Department should not be looking to the individual to recoup funds, because there is a facility under the legislation to do that. The Department should go back Roads Service.
311. **Mr Hussey:** Therefore, your comment was that any shortfall should be left in the public purse.
312. I will begin with the issue, again, of the length of time that we have with unadopted roads. Although I am a lot younger than Dolores and have not been here for 20 years, I know that there are apparently 2,732 unadopted roads. From a list that I got for the Omagh and Strabane district council areas in my constituency, I know that some of the unadopted roads go back to 1970. The reason that I know that is because the planning application reference shows the date. Some go back that far. The problem clearly is that the public purse is not a bottomless pit and cannot be expected to fill this hole, for want of a better word. My background is in insurance, and I know that, if every bond were to be enforced, developers would not be able to obtain a bond thereafter, because you would

- find that the bottom would fall out of that pit as well. However, I found that, when we attempted to enforce a bond, a developer would almost take you up to the courthouse door before they would say, “I will correct that footpath” or, “OK, I will tar that road”. The cost of such action is horrendous. I accept that, in certain instances, we must push them to the courthouse door, and I think that we should do so in a lot more cases. That is one of my major concerns. If we were to suddenly enforce all the bonds, there would be no further development, because nobody could afford to purchase a bond, or house prices would rocket.
313. There are many instances where people have bought a house not knowing that is on a private road. Does a search indicate whether a road is unadopted? Is there something along those lines in place? Many years ago, there was hell to pay on an estate in Omagh — I think it is called Ardmore Crescent — when the residents discovered that it was not on a public road. Everybody and their granny could drive up and down it, but it was not a public road. The residents actually had to pay to maintain it, as you had to do. Again, it was not public knowledge that the road was private until it needed to be repaired.
314. All unadopted roads will not be adopted overnight. The problem, as I mentioned earlier, is that the council will not go on to such estates to empty bins. In fact, there are insurance requirements for a council to go in and empty bins. So, all those problems will continue.
315. **The Deputy Chairperson:** Could you ask a question?
316. **Mr Hussey:** My question goes back to the question about the enforceability a bond. Do you believe that it is practical for the Committee to demand that the bonds be enforced? It is a chicken and egg situation.
317. **Ms McMillan:** I would not say that it is necessarily practical to demand that all the bonds be enforced. I know that, historically, certain roads have been unadopted and that, in some instances,
- the people who live on those roads are happy for them to remain unadopted, because the traffic flow is a lot slower, the roads are slightly narrower, etc. So, there are circumstances where it would not be practical to enforce a bond, and I think that you need to look at that. I think that you should focus on the ones with major issues, especially those with problems linked to sewerage. I accept that you would not be able to enforce all the bonds at once, as it would not be practical.
318. **Mr Speers:** Mr Hussey asked whether it is possible to find out whether a road is unadopted. The property certificate that is obtained will reveal whether a road is maintained at the public expense. That is normally a flag for the purchaser as to whether a road is unadopted. However, just because a road is not yet in the public maintainable arena does not mean that a purchaser should not buy a property on it. The surface itself might be entirely satisfactory, and the road might be well constructed. If there is a bond in place, surely a purchaser and all others involved can rely on the fact that an assessment has been made for a sum of money that can be forfeited to do the job should the job, contrary to the obligation, not be done.
319. I do not think that there should be a blanket enforcement of bonds across the board; rather, bonds should be enforced in the areas where there is the most inconvenience, the most public health deficit and the most implications. Such roads are prime targets for calling in the bond and taking that urgent action. I am not terribly sure what alternative there is after a developer has gone bust; the bond is all that one is really left with. I am not sure that we are aware of an alternative, unless you simply require all the infrastructure to be put in place before a homeowner moves in. However, you then get into the impracticalities of financing all the necessary infrastructure up front, and such things tend to evolve during the course of a development.
320. **The Deputy Chairperson:** Imelda, Brian and Anne, thank you for your presentation

today. A bit of the cut and thrust of politics emerged, but I am sure that you were well able for it. Thank you again.

321. **Mr McNarry:** I see that a boxing ring has been erected outside, and Tyson Fury and Paul McCloskey have turned up. So, if there are any wannabes who feel a bit frustrated —
322. **The Deputy Chairperson:** I thought you were going to ask me to be in your corner.
323. **Mr McNarry:** I was actually going to be in your corner.
324. **The Deputy Chairperson:** Thank you.

9 May 2012

Members present for all or part of the proceedings:

Mr Pat Doherty (Deputy Chairperson)
 Mr Stewart Dickson
 Mr Ross Hussey
 Mr Ian McCrea
 Mr David McNarry
 Mr Stephen Moutray
 Mr Cathal Ó hOisín

Witnesses:

Mr Nigel Lucas *Construction Employers*
 Mr Conor Mulligan *Federation*
 Mr Archie Rowan
 Mr Bryan Vaughan

325. **The Deputy Chairperson:** I welcome Nigel Lucas, Conor Mulligan, Bryan Vaughan and Archie Rowan. You have been listening to the previous witnesses. I invite you to make your presentation to the Committee, and we will then ask some questions. Hopefully, we will become more informed as the day goes on.
326. **Mr Nigel Lucas (Construction Employers Federation):** Thank you for your invitation Chairman; we are very pleased to be part of the inquiry. I am Nigel Lucas, the deputy secretary of the Construction Employers Federation. With me today are Conor Mulligan of Lagan Homes, who is the chairman of our private housing committee, Bryan Vaughan of Vaughan Developments, who is a member of our private housing committee, and Archie Rowan of Micwall Developments, who is also a member of our private housing committee. You have received our detailed submission. We do not intend to make a big presentation today. All I will do is run through a few salient points and then open it up for questions.
327. The federation's view is that the current legislation on private streets successfully delivers private streets to the public road network in the majority
- of cases. All responsible builders want to get roads adopted as quickly as possible to release their bonding capacity, as they cannot continue to build without road bonds. Hundreds of miles of private streets built during the past decade have been adopted successfully. Roads Service has advised us that, in the past eight years, 687 kilometres of roads have been adopted successfully. There are over 3,000 road determinations in the system at present. In the past three years, only 71 cases had to proceed to enforcement, which is just 2%. The purpose of a road bond is to protect house buyers in the event of the financial failure of builders. They show that money is there to finish the road.
328. There are several reasons why the adoption of a road can be delayed. First, banks are not lending money to builders for working capital to finish roads. Secondly, bonding capacity from the National House-Building Council (NHBC), the primary provider of road bonds, has reduced and is reducing further in the current climate. The third reason also relates to the current climate. Sarah Venning said earlier that Northern Ireland Water has reduced its occupancy requirement before sewers can be adopted from 80% to 51%. That is very welcome, but, in the current climate with sales so slow, it can still take time to achieve those levels of occupancy. Fourthly, in the past there have been issues in some legacy developments with obstructions on service strips, and a lack of co-operation from house buyers to remove those obstructions has caused problems with road adoption. Fifthly, from a practical point of view, active sites cannot be topped out while heavy plant is still using the spine road, as the surface of the road will be destroyed. Finally, market conditions have slowed down the rate of sales so that sites are very often mothballed. That also affects the adoption process.

329. That is it Chairman. We welcome any questions.
330. **The Deputy Chairperson:** Before I bring in other Committee members, I want to ask a question. What changes would you like to see being made to the legislation in an attempt to combat the issue of unadopted roads and sewers? I want to know about the specific legal changes you would like to see.
331. **Mr Lucas:** I think we would probably have to give that further consideration. As I said in my statement, we view the legislation as adequate. It allows the majority of roads to be adopted successfully.
332. **The Deputy Chairperson:** You could come back to us on it?
333. **Mr Lucas:** Yes.
334. **Mr McNarry:** You are very welcome. It is good to see you, Archie; I have not seen you for a long time. I am learning today that I am lacking information on the extent of the problem that the inquiry is about. Do you have a figure for the number of sites under your belt and your membership that have unadopted sewers?
335. **Mr Lucas:** We do not keep that kind of information, I am afraid.
336. **Mr McNarry:** Is that brought to your attention?
337. **Mr Lucas:** Generally, no.
338. **Mr McNarry:** Like me, you do not want problems. Are there any legal complexities running against consumer protection that are caused by developers instructing estate agents to market properties that lack the bond security? That allegation is levelled at your industry. The purchase of a home is a big step for anybody, and if someone sees a board up on it with the name of an estate agent, they think that everything should be all right. I know that there complexities with solicitors down the line, but that starting point seems to me to be a potential cause of a problem.
339. **Mr Conor Mulligan (Construction Employers Federation):** That is the crux of it. There are probably two situations: situations where homes are bought without a bond being in place, and situations where everything is done perfectly but the developer, for one reason or another, goes into administration. The bond is there to help in that second situation. The first situation, where purchasers pay for homes without the bonds in place, simply should not happen. Purchasers are encouraged to get legal advice, and solicitors should look at whether there is a bond in place. In the past three or four years, since the crash, solicitors have been looking at those things an awful lot more closely, and it quite simply does not happen now. You will not be able to sell a house without that. So, a lot of this is a horse-has-bolted situation, and I do not think that we will be dealing with it in the future. I know that Brian Speers came to the Committee, and I thought that he answered that question well. That simply should not happen, or, if it does happen in special circumstances, it needs to be absolutely clear to the solicitor and the purchaser that they need to make a decision about whether to go ahead. We should not have to deal with that process going forward.
340. However, developers going into administration is a problem that we have and, probably, will continue to have. Just because a road is unadopted does not mean that it is a problem. All roads are unadopted during construction, and they are not adopted maybe for three, four or five years, depending on the size of the development, until the site is well advanced and the roads and everything are topped out. If they then pass all the requirements of Northern Ireland Water and Roads Service, they are adopted. If a developer goes into administration, unfortunately the bond has to be called in and the money has to be spent. It is not done at the public purse's expense, and the road is finished. That has happened on a couple of sites and will continue to happen for the next couple of years. The bonds are there for exactly that purpose.

341. **Mr McNarry:** There is a certain onus of reliability on your profession and industry to help take us out of where we are now. Do you have an assessment of what we are left with? I am frightened by the fact that we do not know how many unadopted bits and pieces there are and whether they are 95% complete or 20% complete and so on. We need to know that somewhere along the line. For the benefit of potential consumers, can you give us some assurance, given the onus of responsibility on your organisation, that you are as interested in this as we are and that what is lying out there will be fixed? We do not want it all to be left and a new site down the road to be started. How might that work itself through?
342. **Mr Lucas:** First, we cannot quantify that because we do not keep that kind of information. Secondly, in the area of consumer protection, the National House-Building Council recently introduced a new consumer code for homebuyers, and the Construction Employers Federation (CEF) is fully signed up to it and participated in its development. Going forward, we will be more than happy to participate in any further actions that arise out of this inquiry to make sure that we do not make some of the mistakes that have been made in the past.
343. **Mr McNarry:** That is helpful, thank you very much.
344. **Mr Ó hOisín:** Thanks, Nigel. I just want to go back to the previous presentation, when we were talking about the delivery of groupings, particularly in regard to sewer adoption, which, of course, is developer-led. There are obviously issues as regards road adoption because of continuing development and the use of heavy plant and machinery, but as regards the sewer adoption, which is developer-led, what is your view on batch developments, perhaps in groups of 10 units or 20 units? How would you like to see that —
345. **Mr Mulligan:** Do you mean a smaller bond?
346. **Mr Ó hOisín:** A smaller bond, but actually having the finished product there. Rather than waiting on the 100 units to be delivered, it could be done in 25s, 20s, 10s or whatever.
347. **Mr Mulligan:** Very few developers would enter into a bond for 100 units, because it would take too long for us to complete. We batch them up in phases of 10 or 20. It is expensive. There are expensive fees for taking out bonds, particularly in regard to Northern Ireland Water, so you are trying to find a balance there. You are trying to find a number that you would complete in as short a period of time as possible. From our point of view, we want to get them to preliminary adoption as soon as possible. Maybe there is a bit of confusion about the 80% and the 50%. That means the numbers of houses that are occupied within that bond, so if you have 20 houses, once you have 11 completed you can go and get the infrastructure preliminarily adopted, but all of the infrastructure will be constructed. It is not that only 50% of the infrastructure will be constructed, it will all be constructed and inspected at that time, and then everyone gets satisfaction from that because you are not waiting for the eighteenth house to be completed.
348. **Mr Ó hOisín:** On the topping out and finishing of developments, what would you consider to be a reasonable period of occupancy? I have seen developments where you are looking at 10, 12 or 15 years, which is not really acceptable.
349. **Mr Mulligan:** That is extreme, but, again, it depends on the size of the development. If you have a development of 500 or 600 houses, in the current climate that is going to take 10 or 12 years. On the spine road, which will be carrying all of the traffic, although you have all of the infrastructure done and the base coat on, you would be very reluctant to put down the wearing course, and I am sure the Department would be reluctant for us to do that, if there is still going to be heavy plant driving over the top of that. You may

- be able to top out some of the cul-de-sacs that are complete and have people living in them. We have an issue, and I can fully understand Northern Ireland Water's concerns and the Roads Service's concerns about adopting that part — the branches of the tree — without having the trunk of the tree adopted. They will not adopt a section that has a downstream section unadopted, and I can fully understand the reasons for that, but, equally, we are reluctant to top out roads that are not going to be adopted and handed over to the Department. There is possibly a wee bit of work to be done, and we will try to work together with the various Departments to see if there is some way that we can get around that. Ideally, if we have a cul-de-sac of eight or 10 houses and they are all handed over, we as an industry would like to top that road out and [Inaudible.] the DOE, while keeping the spine road just at base coat, because it is going to be taking so much construction traffic. When I say base coat, it has to meet all health and safety standards, and if there are any holes, they would have to be repaired.
350. **Mr Ó hOisín:** There is an issue there as regards the provision of services, such as street cleaning and local council rubbish collection and stuff.
351. **Mr Mulligan:** I have read that in some of the earlier correspondence. In all of the developments I have been involved with, I have never had an issue with bin lorries, for example, coming on to our developments during adoption stage. If the road is in and the turning heads are there, even if they are only at base coat, I cannot see why they would not enter, and I have never had a situation where that happened.
352. **Mr Lucas:** We think there could be a practical solution to that problem.
353. **Mr Hussey:** In support of that previous comment, I am a councillor in Omagh, and Omagh and Strabane District Councils will not go into an estate that is not adopted by the Roads Service. The tenants must leave their bins on a public road. The council will not go into that housing estate, unless you have an insurance contract in place that indemnifies the council.
354. **Mr Mulligan:** I have issues with that, because everyone who moves into a new house, from the minute they take occupancy, is paying their full rates for those services. If the road meets all of the standards, albeit that the top coat may not be on it, which is the last 25 millimetres of tarmac, we do not want to put that on if we are still actively building the development. In Belfast that does not seem to be an issue, but maybe in some of the —
355. **Mr Hussey:** I can tell you that it is an issue in Strabane and Omagh District Councils and in Craigavon as well.
356. **Mr Mulligan:** That is something that we are all going to have to look at. Some development sites are going to take between two and five years, and larger ones could take 10 years to construct, so we cannot have that situation where people pay rates —
357. **Mr Hussey:** I can assure that several in my constituency have not been getting their bins emptied for several years.
358. **Mr Ó hOisín:** Chair, perhaps the CEF will go back to some of the local authorities to clarify that. In the experience of elected members, people have to take bins up to the end of the site, where there is an adopted road, before councils will collect them. Issues regarding the Roads Service's provision of salt and stuff also arose during the past couple of winters. There are a number of issues there that you should address.
359. **Mr Dickson:** Briefly, street lighting is an issue that I have had to deal with. It is not a case of the local authority refusing to carry out its responsibilities but of Roads Service refusing to maintain light standards, which then go out. It is then difficult for residents to get builders to do repair work in the meantime.
360. **Mr Mulligan:** Yes, that can be an issue with some developers. Roads Service is looking to change its policy

- on street lighting. It will not even pay for electric for the lights until the roads are adopted, which may take several years. Every bond that we take out in the future will have to co-ordinate street lighting pillars and electricity meters. That will cost about an extra £1,500 a bond to accommodate this. As soon as it is adopted, that expensive equipment will be ripped out because Roads Service street lighting does not meter its systems. That is double charging, because every ratepayer pays their full rates from day one, whether or not a road is adopted. They are paying for bin collection and street lighting, and it is a lot of unnecessary cost.
361. **Mr Bryan Vaughan (Construction Employers Federation):** The point is that a developer would welcome early adoption of street lighting. If we install street lighting, we would be more than happy that it is adopted as quickly as possible.
362. **Mr Dickson:** Would it not also be fair to say that, in the same way as residents pay their full rates from day one, if I purchase a house from you, do I not expect to get all the services from day one as well?
363. **Mr Mulligan:** There will be street lighting when you move in; it just will not have been adopted.
364. **Mr Dickson:** Yes, but it has to be regularly maintained. After water and sewerage systems are connected, there has to be a reasonable surface left on the road. If I purchase a property from you, I expect that standard to be maintained.
365. **Mr Mulligan:** In accept that, but when you buy into a new development you have to accept that that development will be under construction for a number of years.
366. **Mr Dickson:** Can I hold back money then, against the purchase of the property?
367. **Mr Mulligan:** You would have a bond in lieu of that. That is the whole idea of the bond.
368. **Mr Dickson:** That is very interesting.
369. **Mr McNarry:** May I just —
370. **The Deputy Chairperson:** Quickly, because time is running against us.
371. **Mr McNarry:** Are you illustrating that you suffer from the problem that we are accused of, which is that we do not do joined-up thinking?
372. **Mr Mulligan:** Yes.
373. **Mr McNarry:** If there is that problem, is it not like passing the parcel? You can say, “It is not my fault; it is his”, and so on. Stewart’s salient point is that when you hand over your money you expect to have the full product. I read your summary with interest, and I do not need you to do this now, but is there any way of including a point that states that you could do this better if you co-ordinated and had that joined-up thinking? Doing that would help us elected representatives, because we get it in the neck.
374. **Mr Mulligan:** I appreciate that.
375. **Mr Lucas:** We would agree with that. Adoption is a complex procedure that involves a number of different agencies and processes. There is bound to be a way of simplifying it.
376. **Mr Mulligan:** Previously, it was all under one bond and was a lot simpler. Now it is separated and more complex.
377. **Mr McNarry:** That may be part of the problem.
378. **The Deputy Chairperson:** Thanks very much for your evidence, and I thank Hansard.

9 May 2012

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
 Mr Cathal Ó hOisín

Witnesses:

Mr Francis Miskelly *Department for*
 Dr Andrew Murray *Regional Development*

379. **The Deputy Chairperson:** We now move on to evidence from the Department for Regional Development on unadopted roads. You are welcome, Andrew and Francis. I am sure that you know the procedure. You make your statement, and there will be questions from the members.
380. **Dr Andrew Murray (Department for Regional Development):** I gave a verbal presentation to the Committee previously when I outlined the legislation as I saw it from a Roads Service point of view. I talked through the planning and design process for new streets and the standards that they have to be designed to. I also referred to the determination process, whereby we agree with a developer what needs to be constructed and guarantee that we will adopt a road if it is constructed to those standards.
381. We talked about the bonds, because things do not go right in all cases. The bond is there in cases where the developer does not carry out the roads in accordance with the determination drawings. We talked about the construction and adoption process and how it normally goes. I emphasised that well over 90% of developments result in adoptions going through the process quite smoothly. However, I mentioned that there were some problems, outlined a number of them and talked about the enforcement and remedies that we can adopt under current legislation. After that oral evidence, we were asked certain questions, and we sent a written submission. There have also been a number of Assembly questions on this subject, which, I presume, you will take into account in your review.
382. Our written submission is broadly in line with our verbal evidence, but it provides additional information on costs and statistics that were not given initially. The written submission also gives more information on current processes; the key stakeholders and their responsibilities; the legislative process; and a bit of general information.
383. There is nothing further that I want to say on the process and the legislation. The one area where there has been a bit of an update is that there are areas where the bond, for one reason or another, is insufficient to cover the outstanding works. That is probably a slightly bigger problem now, with the number of developers going into administration. Roads Service has always done some of the work to bring roads up to standard at public expense. So, there may have been times when a bond was inadequate because it was an old bond and inflation had eroded its value. Roads Service would then have made a small contribution to bring the works up to adoptable standard even after it spent the bond money.
384. There are a few areas now where larger sums are required over and above the bond. Roads Service has considered this, and we have decided that we will carry out that work at public expense in the interests of the residents. It is not a huge sum overall, but we have made that decision. We would be hopeful that we would be able to get that as additional money into Roads Service.

- At the moment, the money comes from what we call our local transport and safety measures budget. It is the rather small amount of money that we have over the next few years for spending on things such as cycling measures, bus priority and safety measures. We are prepared to use some of that money to bring roads up to adoption standard. However, we will use the bidding process for in-year monitoring rounds to try to supplement our money, so that it is not coming out of those other worthy causes.
385. To summarise the Department's position on this issue, we maintain that current legislation and the processes that we have deliver new streets that are built to standards and can be adopted within a reasonable time for the majority of developments. We adopted 416 kilometres of road during the past five years. In old money, that is 260 miles, so there is a lot of that going on.
386. We work with the parties concerned when problems arise and normally come up with a solution. That solution has to be balanced and proportionate, so that the interests of all parties are adequately served. That is a summary of where we have come to. There is nothing new there, but I am happy to answer any further questions that have come to your minds since we made our former presentation.
387. **The Deputy Chairperson:** On 1 January 2012, some 3,148 roads were determined for adoption but had not been adopted. In your opinion, what is the primary reason for the non-adoption of those roads? What steps are we going to take to improve that situation?
388. **Dr Murray:** That 3,000-odd figure does not represent a backlog figure. The determination process just means that someone has presented a drawing to us, and we have said that if they build the road to that standard, we will adopt it. Therefore, there is a whole process to go through before it is presented to us for adoption and we then adopt. However, there will always be a large number of roads going through that process.
389. **The Deputy Chairperson:** What is the actual backlog figure?
390. **Mr Francis Miskelly (Department for Regional Development):** It depends how you define a backlog. As Frank Stewart said earlier, if a site has been dormant for over 18 months after it receives a preliminary certificate, that is a backlog. We agree with Frank's figure. We have identified about 1,200 such sites, and we are working progressively through those cases to deliver finally adopted roads.
391. **Mr Hussey:** You referred to the fact that some bonds were underestimated. How could that have happened? What period of time has elapsed for the value of a bond to be eroded?
392. **Dr Murray:** The bond is worked out on the basis of rates from our current measured-term contracts. Therefore, if a bond was taken out five years ago, we would have worked it out on the basis of the measured-term contract rates at that time. You will all know that oil prices have gone up substantially over the past few years. From our point of view, the price of bitumen has gone up over the past few years, so putting asphalt or bitmac down on a road costs a lot more now than it did five years ago. Therefore, the calculations that we are doing now for bonds are quite a bit higher than they would have been five or 10 years ago. That does not mean that the bond is inadequate, because we work out the bond value on the basis of the total value of the road network that has been determined. Therefore, it should be sufficient to cover everything, but we rarely have to cover everything. Generally, some work will be done, and all that the bond will be required to cover will be some remedial work.
393. **Mr Hussey:** I accept that, but you made the comment that, sometimes, the bond itself was insufficient. I found that strange, based on the arithmetic that you have worked on. The Deputy Chairperson touched on the number of roads that are still unadopted. Some of those cases go back 20 years. What can we do about that?

394. **Dr Murray:** You will have heard that this is a developer-led process. There may be a feeling round the table that these roads are not maintained and are nobody's responsibility until they are adopted, but that is not the case. The roads are the responsibility of the developer until they are adopted. Therefore, really what we are talking about here is the process by which they transfer from developer responsibility to public responsibility.
395. **Mr Hussey:** I do not have a problem with that. I have a problem with the fact that a road has been unadopted for 20 years, and the developer could not give a monkey's — that is a technical term, Deputy Chair. [Laughter.] It has been 20 years, and the developer has gone. The list contains planning reference numbers, and they start with 90, 91 and 92. Therefore, that case is from 20 years ago, and there is not a cat-in-hell's chance of getting the developer to do anything about that.
396. **Dr Murray:** I do not know what case you are speaking about, but I am sure there are cases of that vintage where developers have simply not come to us. They have chosen to look after the road network themselves, and they carry the full liability for that road network. If there is an accident on that bit of the road network and somebody lodges a claim, the developer has to defend it and has to pay out compensation.
397. **Mr Hussey:** Again, with all due respect, the developer has gone — 20 years ago or more. Having worked in the insurance industry, as I did for quite a long time, I know that the ball will bounce about until it eventually attaches itself to the Department for Regional Development (DRD). I will leave it at that.
398. **Mr McNarry:** I have just a couple of questions. I take it that you are following the inquiry. Do you think, at this stage, that you might be leaning towards agreeing that we need a review of the bond system?
399. **Dr Murray:** Roads Service recently carried out a review of its private streets legislation. We did not, at that stage, regard a review of the bond —
400. **Mr McNarry:** Have you changed your mind lately?
401. **Dr Murray:** No, we have not.
402. **Mr McNarry:** If the Committee were to suggest it, what would you do?
403. **Dr Murray:** We would respond to that. I am not sure what issue you would feel the current legislation does not address. We would, obviously, answer either in agreement with you —
404. **Mr McNarry:** I understand.
405. **Dr Murray:** — or by saying that the legislation does address that.
406. **Mr McNarry:** We keep talking about these sites, but we cannot identify them. Do you have a list of the problematical sites, if we can call them that, with unadopted sewers and so on? Can you supply that to us? Are there any geographical trends?
407. **Dr Murray:** I do not think that there are geographical trends.
408. **Mr Miskelly:** There are instances of problem sites in all our divisions. It is difficult. We have masses of data on private streets developments — I am picking that word very carefully. We talk, for example, about the number of determinations. A determination can be given, and we will have that in our development control database. However, that development may not actually start on site and become a private streets issue for a number of years. That is totally at the developer's discretion. So, it is very difficult to try to match the number of private streets and unadopted roads, especially those that are problematic, with the number of determinations we have. Certainly, if there was a demand for particular information that would be helpful, we have previously offered to look to provide that. However, there is so much information, it is very difficult to know what to hone in on.

409. **Mr McNarry:** I am trying to get inside your head to get an explanation of what you would call problematical compared to what my constituent, or anyone else's, might call problematical. What is problematical to them is what they are dealing with, there and then, and how it is affecting their life and quality of life. Do you have such a list of problematical sites that you can identify? Can you categorise what you think is problematical? Could you supply that?
410. **Dr Murray:** Yes, we can. However, it is probably the number that is the most important thing. For us, a problematic site is one where the work has been completed but there are defects in the work or it has not been completed to our satisfaction, and where we are unable to persuade the contractor to carry out the work and end up having to go in and carry it out ourselves. Those would be the problematic sites at the tip of what is a big iceberg.
411. **Mr McNarry:** I appreciate what you are saying, Dr Murray. However, that definition of problematical seems to differ from what Northern Ireland Water identifies as problematical. I am trying to find out whether there are some kinds of general problems that we can identify as likely to happen, what we do when they happen and, if we cannot do anything then, what the next steps are. That is what affects the consumer; that is how it affects the person who comes and raps our door. I think that even that would be helpful, just to get an idea. Figures have been bandied about — 1,200, 3,000 and all sorts of things — but it is about trying to identify how big the problem is, how quickly it can be fixed and who fixes it. I think that you have been quite generous in saying that the Department has taken on some responsibilities. I accept that. However, if you could supply us with that, it would be helpful. If it is not good enough, we will tell you that it is not what we are looking for and that we need something else.
412. Finally, do you also have a list of NAMA sites?
413. **Dr Murray:** There are 3,000-odd sites that have been determined and not adopted yet. With probably 2% or 3% of those sites, we have got to the stage of telling the developers that we and the residents have run out of patience with them, so we are going to call in the bond and carry out works.
414. Sites being taken over by NAMA is not really an issue for us. Where a developer goes into administration, someone takes over those responsibilities, and, whether it is NAMA or someone else is immaterial to Roads Service.
415. **Mr McNarry:** Why is that?
416. **Dr Murray:** NAMA has the same responsibilities as any other administrator.
417. **Mr McNarry:** Are there any NAMA problematical sites? You say that NAMA own them, and let me call them "NAMA sites" for ease. In your list, are any of the NAMA sites causing problems in that they are not being completed?
418. **Dr Murray:** I suspect that there are, but that is not an issue for us. Whether the administrator is NAMA, the Northern Bank or someone else, it does not really matter to us.
419. **Mr McNarry:** So, in the mass of data that you have, you do not hold any data that says a site is now a NAMA site.
420. **Mr Miskelly:** It is not specifically recorded as such on our database, but, in individual files, that will have been recorded as we became aware of transfer of ownership. The underlying point that we are trying to make is that our fallback position is, as long as a bond is in place in that site, if the owner, regardless of who that is, does not co-operate and deliver the agreed roads, the bond can be called in and used to provide those.
421. **Mr McNarry:** I want you to appreciate that we are only trying to help.
422. **Mr Miskelly:** By all means.
423. **Mr McNarry:** With all due respect, getting information, not necessarily

- from you, is like pulling teeth. It is difficult enough. I am only looking for information on the number, where they are and whether NAMA is involved. If you could help us, I would much appreciate it. I have asked everyone who has come here whether they have that information, and I am getting nowhere.
424. **Dr Murray:** We can certainly try to get that information.
425. **Mr McNarry:** That would be very helpful.
426. **Dr Murray:** I am not sure why you want it, because there is no difference.
427. **Mr McNarry:** I assure you that I have reasons.
428. **Dr Murray:** That is OK.
429. **Mr McNarry:** I would not waste your time.
430. **Mr Dickson:** My question has largely been answered. If you were given a blank piece of paper, what legislation would you write that would streamline and make more effective the issue at hand?
431. **Dr Murray:** The current legislation is very well considered and very well tried and tested. I mentioned that probably 2% or 3% of the sites that are determined end up running into some sort of problem. If, in quite a complicated legislative process, 97% of what goes through goes through quite well, that is not bad. It may be that things can be done to improve the 2% or 3% that are left, but those are not immediately obvious. When we had a look at our private streets legislation, our view was that some updating was required but that that was of a fairly minor and fairly technical nature. It was to do more with the construction regulation elements, such as allowing for new materials, rather than anything else.
432. **Mr Dickson:** Would the introduction of a mandatory bond and pre-construction requirements be a help or a hindrance to those few percentage points?
433. **Dr Murray:** There are already requirements.
434. **Mr Miskelly:** For roads, before a developer starts to build, there is already a legal requirement to have a bond in place. If they do not have that bond in place, we can take action against them to enforce that.
435. **Dr Murray:** From a departmental point of view, we are content with the legislation as it stands. It is important to separate our point of view on the current legislation and any issues that have arisen because of the way that we work to that legislation. Those are two separate things.
436. **The Deputy Chairperson:** Andrew, if you happen to be living in a housing estate that is part of that 3%, it is severe. It affects quite a number of people.
437. **Mr Dallat:** Thanks. This inquiry is intended to look after things for a long time in the future, so we need to sit up on the balcony and look down on what is happening. I do not have to go beyond my own town, where there are unadopted roads on every street. I am talking about entries. If there were some kind of legislation, maybe they would have been sorted out. Roads Service's approach is that that is not its responsibility, but if there were legislation, at least it would encourage people to come together to put a decent surface on the road to reduce the risk to people's health.
438. If I went out for a wee dander on a Sunday and headed over by Ballycastle and went through Mosside and Dervock and all those wonderful villages, I would see that not one of those villages does not have unadopted roads as a result of the collapse of the building industry. They will be like that for donkey's years if legislation is not put in place to try to address the problem. Yet, Dr Murray, you are very happy with the legislation. At least, that is what I have picked up. Is this real?
439. **Dr Murray:** I am not happy with the position that the construction industry is in, which has led to some issues.

440. **Mr Dallat:** I did not ask you about the construction industry. That industry will look after itself.
441. **Dr Murray:** The issue is balance. Roads Service adopts roads that we think are a necessary part of the transport infrastructure.
442. **Mr Dallat:** Andrew, I could take you up to Greysteel and show you an estate there. There are not only unadopted roads, but there is a cesspool that some wean will drown in. There are street lights with the wires hanging out of them because Roads Service will not take any responsibility. Yet, you cannot give the Committee an idea about legislation that might address that problem. If I were to go on holiday to Malta tomorrow and my travel company were to collapse, there would be a system in place there to get me home. Surely, among us all, we can at least suggest some kind of legislation that will bail out residents who bought houses in those estates in good faith and maybe offer them some kind of hope that, some time in the future, this inquiry will help them in some way.
443. **Dr Murray:** I do not know the example that you are speaking of. I do not know what stage —
444. **Mr Dallat:** Forget about it. I am just talking generally.
445. **Dr Murray:** If a development has been built and has not been adopted, it is either because it has not been presented to us for adoption or because the developer still has work to do.
446. **Mr Dallat:** The developer is bankrupt.
447. **Dr Murray:** Right. In that case, I presume that we will call in the bond, and we will carry out the remedial works.
448. **Mr Dallat:** I do not know what you presume. I am just wondering what legislation could have been put in place to allow this problem to be addressed years before it has been.
449. **Dr Murray:** It would be very difficult to frame legislation that would prevent the problems that arise when a developer goes into liquidation part way through the construction of something.
450. **Mr Dallat:** I understand that. It is not about prevention. The result of the inquiry might be the cure.
451. **Dr Murray:** The cure is that the bond is called in from the administrator, the works are carried out by Roads Service and we then adopt the road and take it over. That is the cure, but there could be an issue with the practice.
452. **Mrs D Kelly:** Thanks for your presentation. Sometimes, it seems to take an awful lot of chasing up to get Roads Service to take action under article 11. What is the criteria for that, and how much time elapses between residents making complaints or public representatives making representation to you and you going down the route of article 11? I know that it is the last resort, but are there set criteria about when you might actually do it, or does it depend on personalities and who is doing it? What are the guidelines?
453. **Mr Miskelly:** It boils down to what the prospects are. As has been mentioned earlier, our definition of a backlog site is when the site has been dormant and 18 months have elapsed before we start to try to chase it up with the developer.
454. Our first action would be to try to negotiate with the developer to see whether we could reach an agreement so that the developer would undertake the works that are necessary. Ultimately, it depends how protracted those negotiations are. You are negotiating in good faith, and if a developer says or indicates that they will do works, you have to give them a reasonable period of time to see whether that happens and so on. However, there comes a point where either the seriousness of the situation or the length of time elapsed indicates that there is no prospect of a developer doing what they said they would do. At that point, it would be appropriate to call in the bond. I stress that we cannot call in the bond too readily or too quickly, because there is money at stake, and it costs a third

- party money when we call in that bond. So, we try to work through negotiation first.
455. **Mrs D Kelly:** But, it is 18 months.
456. **Mr Miskelly:** Well, 18 months would be the dormant period, unless there were particular features. If there was some sort of emergency on the site — if something collapsed, for example — although it is not our responsibility, if we thought there was a public safety issue, we could go in and carry out some remedial work and recover the money from either the developer or the bond. Generally speaking, when it comes to the negotiation to try to persuade the developer to complete the work that he has agreed to do, 18 months is the trigger period for a backlog as we currently define it.
457. **Mrs D Kelly:** I am grateful for that current definition. I am sure that many around this table could point to sites that have been there for 18 years, never mind 18 months.
458. **Mr Ó hOisín:** I will probably just summarise what most other members have said. What is the definition of a new housing development? When is a new housing development no longer called “new”? For example, one site in Dungiven has 104 houses. The first house was built in 1989, and the last house is currently being built. For a long time, that development had unadopted roads, uneven surfaces and all the associated issues. Is there an opportunity to draw up provision for such circumstances in legislation? That is where the batch development unit might come in, with batches of 10, 20, 25 or whatever. Is there a time limit that can be put on that in order for the unadopted roads to be finished and for people who have bought their houses in such developments to get a decent and equitable agreement that other people in older developments have?
459. **Dr Murray:** Current legislation does allow the determination process to be done in batches. In fact, we would do that to facilitate developers.
460. **Mr Ó hOisín:** It is not time factored.
461. **Mr Miskelly:** There is no specific time closure. It really depends on how a developer schedules the work on the site and so on. Obviously, good developers will try to do that to facilitate the development in a logical way, so that they can be completely done with it and get rid of their liability for sections of the development as they become occupied. Those are the sorts of sites that do not generally feature, because they are not a problem, and everything works as it should work. The ones that we are focusing on today are the ones that have run into problems for whatever reason.
462. **Mr McNarry:** Can I just ask a point of clarification?
463. **The Deputy Chairperson:** Yes.
464. **Mr McNarry:** Thank you for writing to us. When you write to us on that 3%, will you also state how many homes are affected on those sites?
465. **Dr Murray:** Yes.
466. **The Deputy Chairperson:** Thanks very much for your presentation. I am sure you will be back before us some time in the future.

9 May 2012

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
 Mr Cathal Ó hOisín

Witnesses:

Mr Liam Mulholland *Northern Ireland Water*
 Mr Frank Stewart
 Ms Sara Venning

467. **The Deputy Chairperson:** I welcome Sara, Liam and Frank. I ask you to make a presentation. You might note that we are in quite a sharp mood this weather. There will be questions from Committee members.

468. **Ms Sara Venning (Northern Ireland Water):** Good morning everyone, and thank you very much for inviting us to this Committee hearing in your inquiry into unadopted roads in Northern Ireland. As you know, Northern Ireland Water made a formal written submission to the Committee in March. Our presentation today aims to draw out some of the key messages of that written presentation.

469. I will introduce the NI Water team that is here today. In Northern Ireland Water, the connections to the water and sewerage network are facilitated by our developer services and connection team, which is headed up by Frank Stewart. The developer services teams sits within our customer service function, and Liam Mulholland is here as head of customer services. Finally, I am the director of customer service delivery in Northern Ireland Water and, therefore, have overall responsibility for the connection and adoption process.

470. At the start of this presentation, I make it clear that Northern Ireland Water absolutely recognises that unadopted infrastructure in developments in Northern Ireland is creating real issues for citizens. We see at first hand the difficult and really unpleasant circumstances that they are left to face. We are keen to work with the various agencies and stakeholder groups involved to ensure that sites are brought up to the relevant standards.

471. I am very conscious of your time constraints, and we will try to be brief. I will kick off by setting the context of how the legislation impacts on the adoption process and giving a high-level overview of the process itself. I will then pass over to Frank, who is our expert in this area, to quantify the number of sites that we believe to be unadopted and give some details of where affirmative action is being taken to bring those sites to a standard at which they can be adopted. It is a complex process. Frank will draw to the Committee's attention areas where we believe there are weaknesses in the process and potential improvements. I will then conclude the presentation.

472. Looking at the terms of reference of the inquiry, we can see that it seeks to understand the issues preventing roads from being adopted. The Committee states quite clearly that you want to understand the processes associated with adoption and the key stakeholders. Northern Ireland Water plays a key role in the process. To explain the role, I will take a couple of minutes to set out the legislation that we operate under. Forgive me if I am stating the obvious, but, just for clarity, under both sets of legislation, when developers plan their site, they have plans for the sewerage infrastructure and the roads infrastructure, which they seek approval for. In an ideal world, when they get those proposals approved and construct

- the site, that approved proposal would be adopted by the relevant agencies — Roads Service or NI Water.
473. There are two relevant pieces of legislation that you will hear referred to today. Think of 2007 as the watershed year, if you like. Before 2007, we were governed by the Water and Sewerage Services (Northern Ireland) Order 1973. I will explain the relevance of article 17 and bonds in a minute. With the formation of Northern Ireland Water as a government company in 2007, the legislation changed somewhat. We are governed by the Water and Sewerage Services (Northern Ireland) Order 2006.
474. What does that mean? It means that for sites planned before 2007, article 17 is the relevant article under which the developers make an application to have sewerage systems approved. Once the approved schemes are installed, they are subsequently adopted. The adoption of the streets is covered under article 32, and the Roads Service administers the bonds security for the site covered by this legislation. So, when you hear article 17 mentioned in this presentation, think pre-2007 legislation. Bonds cover road and sewerage assets and lie with the Roads Service to administer. If a developer makes a default on any of the agreements covered by article 17 for sewers or article 32 for street works, enforcement action can be taken under article 11. That will be led by Roads Service because it holds and administers the bond. NI Water's input will be to assess the sewerage infrastructure and advise on what remedial action is required.
475. For sites planned after the formation of Northern Ireland Water in 2007, article 161 is the relevant article under which developers make their application to have the sewerage systems approved by NI Water. Those approved schemes are then adopted once installed. Two separate bond arrangements are now required: one for sewers with NI Water and one for street infrastructure with the Roads Service. When you hear article 161, think after 2007. For us, the bond covers sewerage assets only and lies with NI Water. In that instance, if the developer defaults on the agreement that they made under article 161, the enforcement is carried out under article 161(6). It is led by Northern Ireland Water. Frank will update the Committee on instances when we have had cause to invoke the enforcement action.
476. I am conscious that I have referred to bonds on a couple of occasions. I just want to clarify what we mean when we talk about bonds. In the approval process for agreeing the sewerage infrastructure, developers are asked to provide a bond security. For the gravity sewers in a site, the value of the bond is 40% of the estimated cost to install those gravity sewers on a completed site. For the waste-water pumping stations on a site, the bond is set at 50% of the estimated cost to construct the pumping station if the site were finished. Really, the underlying principle with the bond security is that it needs to be adequate to cover the cost of any remedial action that may be required if the developer does not live up to the agreement that was made under the relevant article.
477. We have set the scene with regard to the legislation and the bonds. The adoption process itself starts with pre-assessment. Therefore, a developer plans the site, he has plans and he submits those plans through to us for approval. We have over 1,500 sites where we are either considering the plans or where we have advised the developer that this is the minimum scheme and we are awaiting their acceptance of that advice. The second stage is the approval of the design where Northern Ireland Water and the developer have agreed the layout and hydraulic design. We have over 1,300 sites where the design has been approved and/or is in construction.
478. Once the construction process is complete, adoption can commence. That commences with preliminary adoption where we go out and inspect the sewers and ensure that they are fit for purpose. We need a greater than 50% occupancy rate for the section of

- sewer being inspected and, once those conditions are met, we can release up to 70% of the bond, and a 12-month maintenance period commences. The developer then assumes responsibility for the maintenance of the equipment for a 12-month period. There are just under 300 sites sitting at that stage in Northern Ireland at the minute.
479. **The final stage in the process is final adoption:** the 12-month maintenance period is complete, we have satisfied ourselves that any minor defects have been rectified and the system is operating as expected, and we then release the final 30% of the bond and adopt the infrastructure. Almost 3,500 sites have made their way through the whole process and have been adopted.
480. I will hand you over to Frank, who will take you through and give you more detail on the quantification of some of the unadopted sites and give you some information on enforcement actions and costs.
481. **Mr Frank Stewart (Northern Ireland Water):** You can categorise unadopted development into four categories. For us, the definition of an unadopted development is where a final adoption certificate has not been issued or released. The four categories that we place our unadopted developments into are as follows. The first is backlog sites, and there are around 1,200 of those on our record system. Broadly, those fall into the article 17 process, which was pre-April 2007. Some of those sites date back to the early 1990s. A substantial number of those backlogged sites have been completed, meaning that the drainage system has been completed but the developer has not made formal application for the final adoption of those sewers. It is Northern Ireland Water's position that those sewers remain in private ownership and are the responsibility of the developer until the final certificate is released.
482. Secondly, there could be situations where the construction has stopped, and there may be reasons for that. It may be that the developer has ceased to trade and the site is in administration, or it might simply be that the developer has parked his development and is waiting for the market to pick up.
483. The third category would be where construction has commenced and Northern Ireland Water is not aware of that. A number of developments fall into that situation where there is no bond and no article 161 agreement, and the sewer design has not been agreed with Northern Ireland Water. In those situations, the developers operate at their own risk. Northern Ireland Water is working with its counterparts in Roads Service to identify those sites and advise developers of their responsibilities.
484. The fourth area is development that is under construction. That is where an article 161 agreement has been put in place — or an article 17 earlier — the sewer design has been approved and the developer may have commenced construction or he may be waiting for the market to pick up. Those sewers will be considered for adoption at a future date.
485. Going back to the definition of an unadopted site, it is one which has not had a final certificate released. Looking at our record system, you could say that there are about 2,800 on our system, but that needs qualified in that about 1,500 of those are at pre-assessment stage and about 1,300 have approved agreements in place. However, we must be careful to note that not all of those sites will have issues and many will be dealt with under due process and will be adopted at some stage in the future. We think particularly of the 1,200 sites that are pre-2007. Northern Ireland Water works very closely with our colleagues in the private streets department of the Roads Service, and currently we are working to address about 30 of those developments that have been identified as a priority. Some of those sites have serious sewer defects. Others fall into the older development category, and we are trying to move those forward. Part of that consultation or liaison with the Roads Service involves the private streets sewer adoptions working group.

- That meets quarterly, and we discuss sites that have issues and how the adoption of those sewers and streets can be moved forward.
486. Looking at post-2007, six sites have been identified that are in administration and are potential article 161(6) enforcement sites. All of those developers and administrators have been written to, and we are working with the administrators on a number of those sites to see if we can agree a resolution as to how the sewers can be taken forward. Thinking of our input to the article 11 private street quarterly process, enforcement action has been taken by Roads Service, and our part in that has been to take forward the adoption of the sewers. We have provided input on a number of those. Three or four years ago, an article 11 enforcement was a rare exception, but in 2010-11, Northern Ireland Water completed sewer adoption procedures and adopted sewers on 14 sites. In the year just past, we completed sewer adoption procedures in 32 developments. That, collectively, is 46 sites, which will allow Roads Service to move forward with the adoption of the roads. Ongoing with that, we are dealing with, or have dealt with, 110 queries where there is potential for article 11 enforcement. Some are straightforward. With some, as we have discovered, it is just that the developer never completed his paperwork and did not apply for the final adoption, although everything was in order. As I said earlier, however, some are more complex.
487. Looking at 30 developments — just taking that figure as a standard that we have looked at — we have looked at what the cost to replace sewers in those developments might be. It was a very high-level assessment, which began with looking at the 100% replacement of all sewers, but, again, that must be qualified, as not all sewers have issues and defects. According to the high-level assessment, it could cost £8 million to replace all sewers and pumping stations in those 30 developments, but, using our assessment that there is a 40% value for remedial works, that would reduce that £8 million to £3.2 million. If you translate that across the 1,200 potential backlog sites, the replacement value for remedial works to those defects could be in the range of £41 million to just over £100 million.
488. You might wonder why there is such a range in that. There are so many variables in sewer construction. The diameter of the sewer could be anything from 150 to in excess of 1,200. The pipe material could be PVC, which is the standard for sewer pipes, but those with a larger diameter are concrete and, obviously, more expensive. The construction of sewers depends on the depth at which they are being constructed. An increased depth results in increased cost. Then there is the question of whether a waste water pumping station is needed for that development, or, increasingly, whether a sustainable drainage system — commonly known as SUDS — is required in that development. All of those add to cost.
489. As regards the article 161(6) enforcement procedure, where we have been formally notified that a development is in administration, we will trigger the process by issuing what we call a 28-day letter. That asks the developer and his assignees for their programme for completing the site. If there is no response, we will move forward to inspect the sewers, prepare a defects list and estimate the cost of repair. When that is prepared, we will notify the developer, his assignee, the successors and the bond provider of the estimated cost of remedial works and ask them whether they wish to move forward and do the work. If there is no response within 28 days, we will serve the article 161 enforcement notice. The developer and his successors and assignees have the right to commence remedial works at any time until our contractor commences work on site.
490. Our assessment of the weaknesses in the current system are that the article 161 agreements for future adoption of sewers are simply that — agreements. If

- the developer constructs the sewers to a satisfactory standard, we will agree to adopt those sewers. While the developer is obliged to enter into an article 32 agreement, which ties him into the planning process, he has no obligation to complete an article 161 agreement, despite the fact that the road drainage run-off is usually accommodated within the sewers that are approved under the article 161 process.
491. A Northern Ireland Water requirement is for a bond security of 40% of the estimated cost to replace the sewers in a default situation. The value of the bond must be adequate to cover the cost of remedial works. I should say that mostly that is appropriate, but there are few that cost more. What could be done better? The article 161 agreement would have greater depth if it had legal standing. We suggest that it could be made a prerequisite of the article 32 process, hence, tying it into the planning process.
492. Northern Ireland Water is not formally made aware when a developer is in administration or a receiver is appointed, and, sometimes, we have to go chasing them. If that was done better, we could begin the process earlier. There could be a time-bound requirement for the developer to apply for formal adoption from the date that the development is 100% complete — perhaps a year after completion. However, it is true to say that, within the past year, that has become less of an issue, as developers are generally clued-in to that process and make their applications earlier.
493. Property certificates should be mandatory for first-time property sales. At the minute, Northern Ireland Water receives requests for first-time resales. That ties in to the solicitors' conveyancing process, where you may or may not be aware that agreement is in place. That concludes my presentation. I will hand back to Sara.
494. **Ms Venning:** Thanks, Frank. Thank you all for your attention. Summing up, there are two key messages. First and foremost, sewer adoption is a developer-led process. Therefore, the developer puts forward their scheme proposals, and we approve. However, the time that elapses between approval and adoption is entirely at the developer's discretion. They need to apply to NI Water to have the scheme adopted. If they do not apply, the scheme remains unadopted and the equipment remains not maintained. Moreover, we have seen this morning that there is nothing to stop a developer constructing a sewerage scheme that does not have any form of approval from Northern Ireland Water. Therefore, we have suggested making the article 161 approval process for sewers a prerequisite within the article 32 private streets process to prevent that. We have also suggested introducing a time-bound requirement for developers to apply for final adoption following completion of the site.
495. We recognise that people are operating in a difficult economic climate, and we have been working with developers to try to make the adoption process more affordable for them. The practical outworking of that is to encourage developers to break their sites into smaller phases. Each smaller phase can have a bond associated with it, and, therefore, as the phase completes and is occupied, the bond can be released.
496. To reiterate, we absolutely understand and recognise the difficulties that people who are living in unadopted sites face, and we have been working with our colleagues in Roads Service to identify the solutions that are required to bring the sites up to an adoptable standard. That said, we know of almost 3,000 sites with unadopted infrastructure in place. While most of those are likely to proceed through to adoption, some will not. We in Northern Ireland Water will play our part to make sure that the citizens of Northern Ireland are not left living in developments with substandard equipment. We are happy to take any questions.
497. **The Deputy Chairperson:** Thank you for your submission. What do you consider to be the main contributory factor to

- bonds becoming ineffective? Do you have any proposals to either change the bond system or replace the whole system with a new bond system?
498. **Mr Stewart:** The bond system is part of the legislation, and we have not thought about replacing it with anything else.
499. **The Deputy Chairperson:** If you had a blank sheet and were to draw it all up from the start, given all your experience, would you come up with a new system?
500. **Mr Stewart:** It is the first time that I have been asked that question. I have never thought much about it. I will need a wee bit of time to put some thought to it.
501. **The Deputy Chairperson:** You can maybe come back to me towards the end.
502. **Mr Dickson:** Thank you for the presentation, which was one of the most helpful presentations that we have had on this matter, particularly as you set out very clearly the legislative differences; what happened pre-2007 and what happens currently; the very clear weakness in the legislative process in that the requirement to have a bond is not mandatory; and mandatory property certificates. The issue of property certificates has been exercising the Committee throughout the inquiry. It seems very clear to me that we need to move towards some sort of statutory requirement to have a bond in place before any work commences. That seems to be self-evident given the nature of some of the horrendous stories that we have heard around this table in the past weeks.
503. You are suggesting that there should be legal standing to article 161, and my question follows on from the Chair's question. Do you believe that a bond is the best way forward in dealing with that? There are, as I understand it, various types of bonds, including, quite simply, the ability to put cash in your hands and insurance-style bonds. Do you have any views on the differing types of bond, or are you content that, once there is statutory regulation over commencement, most of the current bonds and bond arrangements will be satisfactory to your organisation?
504. **Ms Venning:** Yes. From our perspective, we just need to have the bond facility in place, and the key thing is that the value of the bond needs to be sufficient to cover the remedial work. The thing to understand is that we do not have a big pot of bonds, and, for example, if the bond on one site is £1,000 and, on your site, is £2,000 and the remedial work for your site is £1,500, we cannot take £500 from the first site because it is ring-fenced. The key thing is, first, for us to make sure that you cannot go into a development and construct a sewerage system without having a bond in place. So, tying the 161 agreement in with the article 32 agreement would get us round that. The second thing is that we should not be tempted to reduce the value of the bonds to such an extent that, potentially, we will not be able to fund the remedial work.
505. **Mrs D Kelly:** Thank you for your presentation. I cannot help but wonder who is the champion for the consumer in all this. We heard last week from the Law Society, and I note that one sentence in your presentation relates to property certificates being mandatory for all first-time purchases. It says that that would focus conveyancing solicitors, and that seems to suggest that they have not been focused in the past on ensuring that purchasers' needs are met. You also say that — it has certainly been my experience — this has not just happened because of the recession. You said yourself that some of these sites go back to the late 1990s, and there had been bonds in place. It has been my experience that the Department for Regional Development (DRD) has been remiss in pursuing developers over the bonds. Do you accept that as a valid criticism?
506. **Ms Venning:** The Committee will hear from the Department, and I will leave that question to its officials. A backlog site is one where 18 months have elapsed since the developer has applied for a preliminary adoption certificate, and we and the Department are

- counting that as a backlog site and are actively progressing and pursuing those to ask whether they are ready for final adoption. So, I think we are trying to be proactive, but, again —
507. **Mrs D Kelly:** But you said that some of them have been in existence for over 20 years.
508. **Ms Venning:** Yes, and I —
509. **Mrs D Kelly:** It is hardly really working.
510. **Ms Venning:** Absolutely, but the key thing is that it is a developer-led process. If the developer never finishes their site, allows people to move in and does not apply for the preliminary adoption, there is no power within Northern Ireland Water to ask for any further information on that. That is why we made the second suggestion, which was to have a time-bound prerequisite that states that, if your site is finished, you must apply for adoption within a certain amount of time. Those two factors combined should help address that.
511. **Mrs D Kelly:** But there are regulations in relation to public health about having proper sewer infrastructure and good drinking water supplies, so there is a mismatch across the areas of responsibility. It appears to me that the needs and rights of the consumer have not been championed in the way in which some would have us believe for the last two decades and more.
512. **Ms Venning:** The water infrastructure on the site is covered. That is ours, and has always been ours. The drinking water quality is protected, and we absolutely look after that.
513. **Mrs D Kelly:** But I have been told about one particular site where eight houses in a row have all been connected to the one water connection, rather than having a connection to each individual house, because the developer would have had to pay a sum to NIW for each connection point. That has been allowed to happen. Nobody said, “stop, that cannot be right”, until the house at the bottom of the supply chain discovered that the water pressure was extremely bad, and then people started to ask questions. We have heard from Building Control as well, and there are checks. We all know that if you build a house, agencies come out and check that you have complied with each stage, but there has been a failure somewhere along the line in relation to that example of water connections. That is just one example on one site.
514. **Mr Stewart:** Where we are made aware of those, we are certainly pursuing them under our water fittings regulations and the requirements. We have spoken to some developers who, we have discovered, have carried out that practice. In some cases they have said that it is a short-term solution and is simply to get houses up and running. Building Control has a role to play in that too, and we work closely with Building Control on those matters. Where we do find offenders, we are going after them.
515. **Mrs D Kelly:** But are you going after them robustly, as you ought to and should have done during the good days, never mind being sympathetic to developers who are in difficulties these days?
516. **Mr Stewart:** Yes, where they have failed on the requirements under the water connection process, we are taking that forward as an unapproved connection and dealing with it appropriately. Where pumping stations have failed and there are clearly health and safety issues, we have taken steps to correct those. It might be simply that the developer has not carried out his maintenance, we have spoken with him, and he has then gone and done that. Sometimes, it might be a wee bit more serious than that, and we need to carry out emergency works to get the pumping station up and running. Sometimes it is not possible to do that, because there are more serious issues, and, in that case, we sit down with developers, administrators and bond providers to find out if there is a more permanent solution.
517. **Mrs D Kelly:** Thank you. I am not convinced that enough was done over the years, and I certainly do not

- think that there is good co-ordinated effort. As public representatives, we get the runaround, never mind Joe Public getting the runaround from the different agencies. The buck has to stop somewhere.
518. **Mr McNarry:** Thank you very much for your presentation; I found it very helpful. At the outset, I will state that I do not ascribe to the allegations that all developers are cowboys, nor do they set out to be rogues. I think we are now dealing with circumstances that many of us did not foresee. As Dolores said, it is the end purchaser who comes to our offices to tell us about problems, so I think our inquiry is designed to find solutions to the problems now and make sure that they do not happen again.
519. I have a couple of questions. You say that it will cost an estimated £8 million to deal with problems in 30 developments that Roads Service has referred to you. That seems an awful price. Who pays for that?
520. **Ms Venning:** We looked at those 30 priority sites and calculated that, if we had to replace everything, it would cost £8 million. However, we will not have to replace everything, and the cost of the remedial work comes from the bond money. For those sites, in the first instance, if the developer were still there, we would make representations to him and say, "This is the work that must be carried out; can you please effect this work." If he cannot do that, or if he is not there to do it, and we have to do it, it comes from the bond.
521. **Mr McNarry:** I found that figure frightening. I am glad that you tell me now that it is something that you plucked out of the air, because I actually thought that there was a situation like that. Prior to that, you said that there are some 1,233 developments under article 17. We have those with unadopted sewers. I do not have a calculator, and I could not work out in my head the cost of those on the basis of what 30 might have cost us.
522. Why are you saying these things? What do you want to happen? You tell me that the 30 are fictitious. I take it that the 1,233 are not fictitious. What type of costs or money are we talking about? There are some 1,233 sites under article 17 with unadopted sewers; what are we into there?
523. **Ms Venning:** In both the submission and the presentation, we said that if we had to do everything on those sites, it would cost £8 million. You do not know what needs done until you look at this on a site-by-site basis. So, there are 1,233 sites. We might have to spend £300 or £400 on each site to produce a set of drawings and that would allow the site to be adopted. Alternatively, we may have to go onto that site and completely replace all the sewers and the pumping station and that could run to anything up to — Frank, will you jump in here?
524. **Mr McNarry:** It is OK. I see the picture that you are painting. What would help me are facts. It might be £400, it might be something else. That does not tell me anything to be quite honest. What I need to see — I do not need it now, Chair — is whether you can back that up and tell us really what we might be into. If we have an inquiry into something, we obviously want to lick it and have some solutions. Is it something really major? Is there something terrifying out there? You said earlier that there were 3,000 sites. You hint at something terrifying, but we do not know about it. Can you elaborate on it for us — or is there not something out there?
525. **Ms Venning:** In the submission, we gave five examples of five sites where we needed to go in and do some work. The remedial work in those examples ranged from £800 to £350,000. It would be nice for me to say that I can give you the definitive answer, but I cannot. I can tell you that, on those 30 sites, the cost of replacing everything would be £8 million. We know from experience, and we only ask for a 40% bond, so 40% of £8 million is £3.2 million, and, if we escalate that up to the 1,200 sites, it will cost anywhere in the range of £41

- million to £105 million to go in and effect remedial work.
526. **Mr McNarry:** Let me just play stupid.
527. **Mr Dallat:** Not a problem.
528. **Mr McNarry:** Economically stupid. I haven't a baldy. I am not able to grasp that, so, maybe just for me and those on the Committee who share my view, you might give us some actual details. You are terrifying me with what you are saying, and you are not actually telling me where we are with it. Can you say or quantify what the problem is with unadopted sewers and how much it will cost to fix? Do you know the answer?
529. **Ms Venning:** I think that the short answer is that it would not be possible for us to quantify it. There are sites whose builders did not come to us for any approval for the sewers, so we were in no position to quantify how much it would cost to adopt them.
530. **Mr McNarry:** How many of those are there?
531. **Ms Venning:** I cannot quantify that. Those people did not come to Northern Ireland Water in any way.
532. **Mr McNarry:** Yet you know about them.
533. **Ms Venning:** No. I am saying that there have been instances. Recently, there was a site in Coalisland where the developer had gone ahead, built on the site and moved people into that site, but we were not consulted on that in any shape or form.
534. **Mr McNarry:** I understand, and I can see that, but is there one of them, or are there 100? That is what seems important. You cannot raise the issue and suggest that it is a problem without quantifying it and then give us one example. I really need to know whether there are any more. How would I find out?
535. **Mr Stewart:** It falls into two categories. I will try to give some reassurance on this. There are older sites that have been in existence for 10, 15 or perhaps upwards of 20 years where the developers have not submitted the application for final adoption. By now, we would have known if there were any serious issues in those sewers. We can say that those sewers probably do not have many issues.
536. **Mr McNarry:** That is reassuring.
537. **Mr Stewart:** Think of some of the more recent ones, where developers have gone ahead and, through no fault of their own, because of the economic climate, have not been able to sign the agreement and get it to us. I am aware of a developer who was working through the process. He submitted his detailed design, he was going ahead with the process, he provided all the statutory agency approvals, and, within two weeks of signing the agreement, he went into administration. There are no agreements and no bonds for that development. I am aware of another development where the developer has constructed a number of houses, probably around 10% of his overall approval amount, and he has not constructed a pumping station. Those situations become more serious. There are six sites in administration that we know of. We are working our way through that process, but I am sure that there are more out there that we do not know about. Those are the ones that we need to be thinking about.
538. **Mr McNarry:** I agree, Frank. What I am trying to tie down is how many there are. Finally, from what you do know, is the National Asset Management Agency (NAMA) playing a role in any of the problems?
539. **Mr Stewart:** There are some developments in administration where NAMA is involved. We are working with those to see whether there is a resolution.
540. **Mr McNarry:** There is a time, Chairman, when, I think that discretion may be suitable, contrary to what I said earlier about Translink and silence. I wonder whether we can be told discreetly what sites Frank is talking about. I do not want him to say it in public and on record for the Hansard report, because what Frank has just said is quite

- contrary to what we heard in a previous session about NAMA.
541. **The Deputy Chairperson:** Are you making such a request now?
542. **Mr McNarry:** I do not want to put Frank in that position, but he said there is a number of sites where NAMA is involved.
543. **The Deputy Chairperson:** Frank, would you be able to answer that in closed session?
544. **Mr McNarry:** He could even put it to the Committee Clerk.
545. **Mr Stewart:** Not off the top of my head; I could not give you the actual figures.
546. **The Deputy Chairperson:** Could you, even in a week or so, relay that back to the Committee Clerk?
547. **Mr Stewart:** Yes, I could.
548. **Mr Dallat:** Just to get my head around what we have heard from the panel, Sarah, you are the director of customer services delivery.
549. **Ms Venning:** Yes.
550. **Mr Dallat:** Liam, you are the head of customer services. That is very confusing. Did somebody make these titles up?
551. **Ms Venning:** Yes, someone did make those titles up; we just try to do our job. In my remit, I have the whole operations side of Northern Ireland Water: the people who produce the water; people who treat the waste; the guys who go out to look at the blockages; the guys who go out to re-zone and to examine water distribution issues; and the people who look after leakage as well as the billing area and the contact centre. The developer services team falls under that customer service leg with Liam. That is where the distinction sits.
552. **Mr Liam Mulholland (Northern Ireland Water):** You are probably wondering why I am so quiet this morning. I have just taken over developer services, so I am slightly new to this job.
553. **Mr Dallat:** Please, Liam, do not confuse me even further. I know it is difficult not to stray into individual cases, and we are trying to put an inquiry together. Nobody would have wanted to inherit the sewerage system that you inherited. But some of it has been fairly recent. You did an excellent scheme in Ballykelly a couple of years ago. It is a pity, though, that the senior citizens' gardens are washed out with overflows every winter. They spend six months of the year tottering off to the garden centres to buy their plants, but somebody was not on the balcony looking down. When I met your representatives, it was a question of finances, prioritising and stuff like that. How much of what comes out of this inquiry to clear up the unadopted sewers and so on will be dependent on your finances?
554. **Ms Venning:** The onus for dealing with unadopted infrastructure and bringing it up to standard does not lie within the remit of Northern Ireland Water. Northern Ireland Water is not funded for that work. Northern Ireland Water absolutely works with the Roads Service identifying certain things. In the first instance, we identify to the developer what a development needs to look like. We set all of that out, and we reach an agreement with them. We check that it has been constructed to the standard that the developer agreed in the first instance, and we issue them with a defects list. We work through those defects with them, and if none of those measures is successful, we can invoke the enforcement action. The money to carry out the remedial work comes from the bond. It is not, therefore, reliant on Northern Ireland Water's funding; Northern Ireland Water is not funded to carry out the remedial work.
555. **Mr Dallat:** To confuse my simple mind even further, rural areas are dotted with little treatment works that need to be replaced to bring them up to European standards. In fact, other major schemes are being held up pending the availability of money to link those together, or whatever happens, to convert them into

- proper sewerage treatment works. Is that not dependent on funding?
556. **Ms Venning:** Yes. We carry out that work under our capital works programme, but that is distinct and separate from the issue of unadopted infrastructure.
557. **Mr Dallat:** It would be useful to know what legacy you have inherited. At the end of the day, I am only interested in the environment, to be honest. I am not interested in your title or things like that, even though I asked about it. I am interested in when we can have an overall sewerage system that is fit for purpose and which does not bring infraction proceedings from the European Union. Is that part of this inquiry? Or, have I gone outside it, Chairperson?
558. **The Deputy Chairperson:** I think that you have gone a bit outside it.
559. **Mr Dallat:** Oh well; I tried.
560. Finally, you know that there have been a number of tragedies relating to sewers on unfinished sites. There was certainly one case in which a child drowned. What legislation is necessary to stop developers, regardless of whether they are cowboys — I do not care — and to enable you to identify the sites that are posing a danger? Furthermore, what legislation is needed to stop developers doing the sort of thing you described and going ahead and doing work. I would be caught if, as an unemployed person, I went out to do two days' work. What legislation is missing that allows developers to do that. In Portstewart, for instance, houses were built, but there were no sewerage works.
561. **Ms Venning:** I think that we need to be tied into article 32 of the Private Streets Order and the planning process. I apologise for all of the numbers, but we see the tying in of article 161, which is the sewerage infrastructure, with article 32, which is to do with the streets, as a way of preventing this problem.
562. **Mr Dallat:** I have a final question. Who is going to bring forward this legislation that is fit for purpose? You probably know that the Assembly is beginning to get a reputation for not bringing forward legislation, despite the fact that we are called Members of the Legislative Assembly. Frank said earlier that he did not think about things like this. Maybe I am misquoting you, Frank.
563. **Mr Stewart:** I was asked a specific question about bond systems and something that might replace those.
564. **Mr Dallat:** I was just wondering, so that this inquiry does not gather dust somewhere in the bowels of this place, where will the Bills — the legislation — come from? Does NI Water have input?
565. **The Deputy Chairperson:** I think that I will call the Committee Clerk in on the next step; it is a very relevant question.
566. **The Committee Clerk:** Obviously, if the Committee makes a recommendation in respect of legislation, there are a number of ways that that can be done. Probably the easiest way, from the Committee's perspective, is to ask the Executive Department responsible for the legislation to bring forward the amendment. If the Executive Department feels that it does not wish to do that, or if it does not accept that recommendation, the Committee can bring forward the legislation to amend. However, we seek to have the agreement —
567. **Mr Dallat:** Has that ever happened in the past?
568. **The Committee Clerk:** Not that I am aware of.
569. **The Deputy Chairperson:** It has been threatened.
570. **The Committee Clerk:** As the Deputy Chair said, it has been threatened in the past. However, from the Committee's perspective, obviously it would want to consult and negotiate with the Executive Department or Departments and to have their agreement to bring forward an amendment.
571. **Mr Dallat:** I hope that that will be reflected in our report.

572. **The Committee Clerk:** It will.
573. **Mr Dallat:** We cannot sit idly by and do nothing without at least suggesting what might happen if others fail.
574. Finally, it is probably outside the report, but there was an awful problem for years and years about road openings. I have to say that that is largely cleared up because utilities go out and do the work. Hopefully, in the terms of unadopted roads and sewers there will be some mechanism — too simple to understand — that can be put in place that will solve the problem.
575. **Mr Hussey:** The comment “developer-led” has been sticking in my head since this process began. It appears that once somebody gets planning permission, they can go ahead, for example, and put up a 50-house estate, and you are not really involved until they have finished with it and they bring you in and show you the drains and the sewers. Is that the way it works out?
576. **Ms Venning:** No. The process should be that, as a developer is planning his estate, he will plan the sewerage and the road network. In most instances, they will come to us and show us their plans, and we will approve them or suggest some amendments and reach an approved set of sewerage infrastructure plans, which the developer then constructs. He then comes to us and tells us that he has constructed those plans and asks whether we will adopt them.
577. **Mr Hussey:** But he can bypass that?
578. **Ms Venning:** Potentially he could install a sewerage system that we have not approved. However, if we are aware of that happening, we make it clear that that is done at the developer’s own risk, because the system cannot be adopted until it is approved by us. If it is not adopted, the onus for maintenance would remain with the developer. Therefore, it is not in the developer’s interest to do that.
579. **Mr Hussey:** However, that “if” makes it possible for somebody to slip that through. John mentioned legislation, and legislation would need to be enforced or brought in to ensure that statutory requirement.
580. **Ms Venning:** Yes.
581. **Mr Hussey:** To go back to David’s mathematics and his economics —
582. **Mr McNarry:** Are you going to call me stupid now?
583. **Mr Hussey:** I would never even consider doing that. You may come back.
584. In relation to the stages of adoption, in the preliminary adoption you release 70% of the bond when you have 50% occupancy, which, obviously, means that there is 50% non-occupancy. You have 40%, and you give back 28% and, therefore, have 12%. That was good, was it not — and that was all off the top of my head. You have 12% of the 40%, and if this person does not proceed, you then have a possible massive shortfall. I am going to come to a question about bonds. Who holds the bond, and where is the cash? You have to enforce it, so how do you enforce it? Do you go to the builder and say, “Right, do you want the bond?” How much is there in the ether in respect of bonds? How much is committed to bonds that Northern Ireland Water is aware of?
585. **Ms Venning:** I will answer the first part of your question. To release the 70% of the bond following the —
586. **Mr Hussey:** When your 40% becomes 12%?
587. **Ms Venning:** Yes, in that instance. The sewer infrastructure has to be up to standard, so we will have inspected it. We will have said that the site is half occupied, and the reason it needs to be half occupied is that we need the sewers to function and be in operation in order to ensure that they are fit for purpose. At that point, we say that, on the balance of risk, 70% of the bond is fit to be released because we can see the sewer operating and that there are only minor defects.

588. **Mr Hussey:** But that is a gamble, because you only have one end of the development finished. The developer could then move up to the other end and make a complete hash of it.
589. **Ms Venning:** That is why we talked about splitting developments into phases. We can work with the developers to ensure that each phase has its own bond. If you keep the development in a large chunk, it will take longer to get to the point at which that 70% of the bond can be released. Frank can answer the questions about where the bond sits and how much of it we have.
590. **Mr Hussey:** Can we come back to the chunks, then? If we are going to do it in chunks, is it 40% per chunk?
591. **Ms Venning:** Yes.
592. **Mr Stewart:** When we release the preliminary certificate of adoption, the sewers will have been fully checked and inspected, and only minor defects will have been identified, such as step irons or cover slabs being displaced, for which, we estimate, the 12% would cover the cost of remedial work.
593. **Who holds the bonds? Bonds can come under three headings:** a guarantee bond, a cash bond, or a guarantee bond provided by a bank or an insurance company. The bonds are held by us. We have kept bond documents for sewer-only sites since April 2007. Prior to that, they were held by Roads Service under the Private Streets (Northern Ireland) Order 1980, and those were departmental bonds that covered sewers and streets.
594. **Does that answer the question so far?**
595. **Mr Hussey:** Do we know how much in pounds, shillings and pence is held in bonds by Northern Ireland Water?
596. **Mr Stewart:** Yes. Under the article 161 process, we have something of the order of 460 bonds in place, which have a total value of about £14·6 million. Of those, 352 were still sitting with a 100% bond and 108 have been reduced to 30%.
597. **Mr Hussey:** How often would you enforce a bond?
598. **Mr Stewart:** We do not want to have to do so, but we would wait until we have been informed that the developer has defaulted. There may be several ways in which a developer would do that. Generally, in today's economic climate, a developer will have gone out of business.
599. **Mr Hussey:** How many months or years are we talking about? Mention was made earlier of some estates that were built 20 years ago. In Donemana, in my constituency, one estate was sitting for quite a while, and some action had to be taken. How long do you wait before you would enforce a bond?
600. **Mr Stewart:** There is no clear answer to that. In most of the recent cases, we have acted within six months after having had discussions with the administrator or the assignees or successors. Generally, we like to move things forward by agreement, so that we can agree that someone — a successor or an assignee, or someone who has a responsibility — will pick up on the defects and complete the remedial works. If we find that that is not happening, we will issue the trigger letters to begin the process.
601. **Mr Hussey:** Finally, do we know how much it has cost the public purse to remedy the cases that you have dealt with in, say, the past five years?
602. **Mr Stewart:** That is question to put to the Department. Under the article 161 procedure, there has been no expenditure from the public purse.
603. **Mr Ó hOisín:** As elected members on councils, MLAs or both, we have often seen misunderstanding about the relationship between NI Water and DRD Roads Service in relation to dealing with issues on the ground, because mixed systems and mixed legislation responsibilities have been prevalent here over the years. Like Stewart, I am slightly clearer about that after today.
604. I have only a couple of short questions. I am more used to the Jimmy Spratt

- school of allowing questions. The number of enforcement actions taken under article 11 of the private streets order was 14 two years ago and 32 last year. Given the numbers involved, is that an adequate enforcement response?
605. **Mr Stewart:** It is not a quick fix or a quick procedure. There are measures that have to be worked through. We have worked with our colleagues in the private streets department of Roads Service to deliver that in the past year. There are others under process at the minute, and we are moving forward with Roads Service as appropriate.
606. **Mr Ó hOisín:** Do you have any idea how many?
607. **Mr Stewart:** We are asked questions weekly about potential article 11 enforcements. It may be something simple, such as constructed drawings or the paperwork having never been completed, or it may be something major. We are working through one at the minute where there are serious issues with the sewers. We reckon that it could be two to three months before we have identified all the problems in that because it is a work in progress.
608. **Mr Ó hOisín:** Are those all part of the anticipated 110 applications that have come through?
609. **Mr Stewart:** We have had requests for what may be potential article 11 sites. Not all of those will go the distance and become article 11 enforcements.
610. **Mr Ó hOisín:** I will pre-empt the Construction Employers Federation's presentation. It wanted the NI Water policy of 80% occupancy prior to the adoption of sewerage to be reduced to 51%. Will that create issues such as those Mr Hussey outlined?
611. **Ms Venning:** That was an example of us working in tandem with the Construction Employers Federation. The Construction Employers Federation asked for us to help it through this time. We feel that we can accommodate that without additional risk of the site becoming unsustainable or unadoptable. We do not feel that we have put the public at risk by moving from 80% to 50%. We are trying to help the developers in this instance. There are things that we can do. We absolutely want to be involved in finding solutions where we can and not in throwing up problems.
612. The other area in which we have worked is to say, "Consider your site in smaller phases. If things are unaffordable for you, we are happy to facilitate and approve your site in smaller phases." That allows developers to get a smaller bond to construct the approved piece of infrastructure. It allows us to release the bond and adopt that piece of infrastructure, which is a win for the people of Northern Ireland and for the developer.
613. **Mr Ó hOisín:** Would the latter approach of releasing it in smaller batches be more prudent?
614. **Ms Venning:** It is a combination of both. What we are saying is that, in the smaller phase, once you get greater than 51% occupancy, that proves the infrastructure. If it is more than 51% occupied, the sewers are operating. We can prove that the sewers are operating. We test and inspect them and identify any defects in an operational sewer as opposed to a sewer that is not operating.
615. **The Deputy Chairperson:** Thanks very much for your presentation. We normally allow only one or two questions per member, but, as this is an inquiry, we are trying to drill down a wee bit. Thanks very much. Frank, perhaps you will write to me and the Committee Clerk on the questions that you could not answer today, particularly the one about having a blank sheet and rewriting the system.

6 June 2012

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 *National House-
 Building Council*

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

617. **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.

618. 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.

619. 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.

620. 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.

621. 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.
622. 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.
623. 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.
624. 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.
625. 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.
626. **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?
627. **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.
628. **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.
629. **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.
630. **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?
631. **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.
632. **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.
633. 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.
634. **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.
635. **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.
636. 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?
637. **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.
638. **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.
639. **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?
640. **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.
641. 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.
642. **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.
643. 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?
644. **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.
645. **Mr McNarry:** Will they get legal aid?
646. **Mr Livingstone:** I could not comment on that, but I assume that they would.
647. **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.
648. 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.
649. **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.
650. **Mr McNarry:** Good luck.
651. **The Deputy Chairperson:** Mark, we have no further questions. I appreciate your coming in at short notice to give us a briefing.
652. **Mr Livingstone:** Thank you.



Northern Ireland
Assembly

Appendix 3

Written Submissions

Written Submissions

1. Antrim Borough Council
2. Ballyhoran Realm Interagency Group
3. Ballymena Borough Council
4. Belfast City Council
5. Building Control Northern Ireland
6. Citizens Advice
7. Connaire McNeary
8. Cookstown District Council
9. Craigavon Borough Council
10. Craig Fitzgerald
11. Danny Kinahan MLA
12. Department for Regional Development
13. Department of Finance and Personnel
14. Derry City Council
15. Down District Council
16. Fermanagh District Council
17. Land and Property Services
18. Margaret Ritchie MP MLA
19. National Asset Management Agency
20. Newtownabbey Borough Council
21. National House Building Council (NHBC)
22. Northern Ireland Local Government Association (NIGLA)
23. Northern Ireland Water
24. The Committee for the Environment
25. The Construction Employers Federation
26. The Consumer Council NI
27. The Law Society of Northern Ireland
28. The Police Service of Northern Ireland
29. The Utility Regulator

Antrim Borough Council



Our Ref: DMcC/BD/KS

Paul Carlisle
Clerk to the Committee for Regional Development
Room 254
Parliament Buildings
Ballymiscaw
STORMONT
Belfast BT4 3XX

5 March 2012

Dear Mr Carlisle

RE: Inquiry into Unadopted Roads in Northern Ireland

Your correspondence dated 9 February 2012 regarding the above refers.

Council resolved to endorse the submission from NILGA (copy attached) but also requested that Committee -

- consult with 'The Law Society of Northern Ireland' to ensure that adequate protection for the home purchaser against unadopted roads is built into the conveyancing process;
- consider the imposition of adequate conditions within the Planning process for developers in administration (or those who have subsequently changed their corporate name) to ensure completion on unadopted roads / access in previously unfinished developments;
- consider the need for tighter regulation regarding private developers collecting ground rent for unfinished developments, concerns having been expressed by Members.

Council trusts the views of Elected Members will be duly considered and appreciates the opportunity to participate in your consultation exercise.

Yours sincerely



David McCammick

Chief Executive
Enc

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Director of Corporate Services
Catherine McFarland

Director of Development and Leisure
Geraldine Girvan

Ballyhornan Realm Interagency Group

Ballyhornan Realm Interagency Group Submission to the Committee for Regional Development Inquiry into Unadopted Roads in Northern Ireland

The Ballyhornan Realm Interagency Group, whilst recognising the terms of reference for the inquiry and the suggested definition of an unadopted road set by the Committee, would like to highlight where the current process has failed the people living in Ballyhornan and Bishopscourt.

Background

The population of the Bishopscourt/Ballyhornan area approximates 1000. Many of the dwellings in Bishopscourt/Ballyhornan are former RAF barrack blocks, and many of these were originally built decades ago as temporary facilities. A number have been converted to residential use but many lie derelict. Other relics of the military establishment, e.g. high metal fencing, stores houses etc, remain and blight the environment. At the time of disposal of the RAF site by the MoD no obligations were placed upon the purchaser. As a result, water and roads infrastructure were never brought up to adoptable standards and in places remain grossly inadequate.

There appears to have been an assumption on behalf of the MoD at the time of disposal that, because the lots were sold to a developer, the existing properties would be demolished and new properties built. However, no obligations or restrictions were placed upon the purchaser e.g. to follow proper procedures, produce a development plan or to place a bond.

Current Situation

Since the MoD withdrawal from the area, the former RAF accommodation has been changed to varying degrees and standards, into residential accommodation. This includes a mixture of permanent residents and holiday home owners but the last few years have seen a trend towards permanent occupation. However basic physical infrastructure in the area is wholly inadequate to support the population in the area.

While there has been some private investment in homes in the Bishopscourt/Ballyhornan area, there has been little investment in basic infrastructure. The area lacks the basic infrastructure common to “normally” constructed residential settlements and significant deficiencies are evident in roads, water and sewage provision. These problems are particularly acute in Killard Square and Killard Drive, where the procedure for adopting these services has not been followed through and they remain unadopted by the relevant authorities. As well as contributing to the general impression of dilapidation and unkemptness of the environment, this situation has led to a number of specific problems. These include the periodic overflowing of the sewage system resulting in raw sewage being deposited in homes and gardens. Incidences of a brown tinge and suspension in water supplies have also been reported. Roads are pitted with potholes and inadequate for normal traffic. The roads, water and sewerage infrastructures are not of adoptable standard, so the Department of Regional Development cannot fund their upgrading within existing legislative and policy constraints.

DoE Planning Service has designated Killard Drive and Killard Square as Housing Policy Areas in the draft Ards and Down Area Plan. It notes that redevelopment of these from temporary units to permanent accommodation must consider various issues. Planning Service highlights the necessity of strengthening and widening the road connection to the main road, implementation of footpaths, street lighting and appropriate traffic calming provision.

The environmental problems outlined above are accompanied by some significant social issues. Bishops court/Ballyhornan currently ranks 75th in the Noble Index of deprivation, placing it in the bottom 2% of the most economically deprived enumeration districts. Ballyhornan /Bishops court stands out starkly as among the most deprived districts in the east of Northern Ireland. Judged by the Noble statistics, the area suffers greater disadvantage, than for instance, the most deprived area of Downpatrick and economically disadvantaged rural areas, like Crossmaglen, Co. Armagh, Devenish and Co. Fermanagh. It is on a par with many of the most deprived areas of West Belfast.

Conclusion & Request

As stated the current restrictions which the various Government Departments currently operate under has not allowed them to adopt services in this deprived area e.g. roads. A method must be put in place which will allow roads in deprived areas that do not reach the minimum adoptable standards to be brought up to these standards and adopted by the Department. Ballyhornan Realm Interagency Group ask the Committee, as part of their inquiry, to consider how unadopted roads in deprived areas such as Ballyhornan / Bishops court can be helped.

Yours sincerely,

Liam McLernon

Chairman Ballyhornan Realm Interagency Group
Down District Council Offices
24 Strangford Road
Downpatrick
BT30 6SR

20 February 2012

Telephone: (028) 44610807
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Ballymena Borough Council

Dear Sirs

The Committee for Regional Developments Inquiry into Unadopted Roads in Northern Ireland

In relation to the above matter, the Building Control Department in Ballymena Borough Council, having an interest in this issue, wish to hereby set out our proposals for consideration in the Inquiry:

Unadopted Roads in Northern Ireland

The number of unadopted roads within Ballymena Borough Council area has increased during the period of the economic downturn. This is due to the builders being unable to sell houses and hence the roads and footpaths are left in an incomplete state.

Whilst unadopted roads have little or no impact on Building Regulation, they have the potential to have an impact on Refuse Collection and Street Cleansing.

Refuse Collection

The Council currently collects refuse from occupied dwellings within sites with unadopted roads, provided safe access is available for the refuse collection vehicle. However, any dangerous roads encountered by Council employees are reported to the D.R.D. Roads Service who in turn contact the developer. The responsibility at this stage lies with the developer to ensure the roads and footpaths are safe.

Street Cleansing

The Council carry out no street cleansing within developments until the roads and footpaths are adopted by the D.R.D. Roads Service.

Recommendations

It would be useful if Councils were kept informed as to the progress of the roads and footpaths within developments reaching an acceptable standard for adoption and if there are dangerous roads which their employees should be more aware of when carrying out Council functions.

Consideration should be given to changing legislation that developers have insurance cover to the value of the road construction. This should be in place before the commencement of works on site and cover the costs of works where the building company goes into liquidation.

Kind Regards

Ballymena Borough Council

Belfast City Council

Health and Environmental Services Department

Your reference

Our reference

Date 15 March 2012

Mr Paul Carlisle
Committee Clerk
Room 254
Parliament Buildings
Ballymiscaw,
Stormont
Belfast
BT4 3XX

Dear Mr Carlisle,

COMMITTEE FOR REGIONAL DEVELOPEMNT'S INQUIRY INTO UNADOPTED ROADS

Belfast City Council welcomes the opportunity to input into the inquiry initiated by the Committee for Regional Development into unadopted roads within Northern Ireland and would wish to outline the following comments from a technical officer perspective.

(i) Public and Private Sewers

A major issue for all councils is in respect of sewers and the adoption of roads and the associated issue of who has responsibility for the sewer as it can be the responsibility of Northern Ireland Water or the local councils. Previously any sewer that took more than one building was designated as public and inspected and adopted by the DOE Water Service. As a result of changes to legislation when Northern Ireland Water (NIW) was set up as a Government owned company (Go-Co), developers were given a choice either to place their sewers up for adoption (bonded and inspected by NIW) or let them remain private where Building Control in local councils were responsible for inspection and enforcement. Where the developer chose not to pay the bond and go for adoption they fell under the Building Regulations.

This raises the following problems:

- Shared ownership (developer/homeowner) which unless there is a management agreement in operation creates a real logistical issue
- No recognised building standards or guidance for such sewers set by DFP for their construction which makes inspection and associated enforcement difficult.
- Sewers under roads are often put in before the rest of the development starts and at which stage building control are notified which makes retrospective inspection difficult.

- It is our understanding that you cannot have an un-adopted/private sewer under an adopted road so there needs to be clearer linkages between both systems as currently there is a mismatch

The Council would commend that there is a need for greater regularisation of the legislation as it pertains to the role of NIW in dealing with sewers under un-adopted roads. Consideration should be given to reverting back to the previous legislation whereby there was no distinction made between public/private sewers in terms of the requirement for them to be adopted.

(ii) Environmental Health

There are potential environmental health (safety) risks associated with unadopted roads, specifically regarding unfinished surfaces, footpaths or lack of lighting albeit these have not yet led to significant issues in Belfast. There may also be difficulties for Councils in erecting signage (i.e dog fouling signs) on un-adopted roads with poor surfaces.

There may also be issues in regards to the removal of flytipping on un-adopted roads whereby the responsibility rests with the home owners and normally falls to councils to deal with.

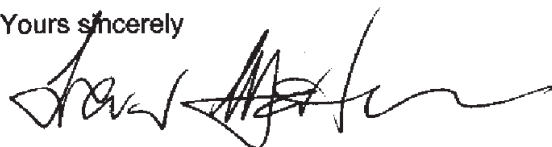
(iii) Unadopted Back Alleyways

A further issue of concern which we would like to highlight for the consideration of the Committee albeit recognising that it is not contained within the terms of reference of the inquiry is un-adopted back alleyways.

Many of these areas have poor, uneven surfaces; are overgrown with vegetation; often have surface water accumulations and are generally in a very poor state of repair. Generally, they are not maintained by anyone. This creates difficulties for residents in terms of their ability to leave bins for collection and for Council staff in moving bins within these areas. Given the dangerous nature of some un-adopted back alleyways, it is difficult, and in some instances prohibitive, for council staff to collect bins, litter pick or remove bulky items.

If you would like to discuss further any of the issues outlined above, I would be obliged if you could please contact my colleague Trevor Martin, Head of Building Control on Tel: 028 9032 0202 or email: martint@belfastcity.gov.uk.

Yours sincerely



Suzanne Wylie

DIRECTOR OF ENVIRONMENTAL HEALTH

Building Control Northern Ireland

Inquiry into Unadopted Roads in Northern Ireland (Terms of Reference)

For the purposes of the inquiry the following definition of an unadopted road is suggested:

An unadopted road is one where a street planning function has been exercised, a bond has been placed under the Private Streets (NI) Order 1980 and the Department is not satisfied that the street has been sewered, levelled, paved, channelled, made good and lighted.

The Terms of Reference are defined as follows:

- To identify the extent, types, distance and costs of bringing unadopted roads to a level where the Department is content to adopt.
- To define the current processes required to ensure that undeveloped roads are constructed to a standard that allows for statutory adoption by the Department.
- To identify the key stakeholders in the above processes and all statutory and other processes and responsibilities they have accountability for.
- To review the legislative processes in place within Northern Ireland to ensure that it meets with all EU and other jurisdictional and policy requirements.
- To benchmark the Northern Ireland legislative processes against those currently in place in the UK and the Republic of Ireland.

The Committee for Regional Development

Room 435
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BT4 3XX

Email: committee.regionaldevelopment@niassembly.gov.uk

BCNI Response

The Building Control Northern Ireland Executive Committee welcomes the opportunity to provide a written response to the current inquiry into unadopted roads in Northern Ireland.

As outlined in the terms of reference, there are a number of areas which have been identified where the Department is unable to adopt a road. One of those areas which has been identified relates to public sewers, both foul and storm. Our response will deal in the main with this issue.

Currently under The Water and Sewerage Services (NI) Order 2006, a developer can choose (or not choose) to submit an application to NI Water stating an intention for future adoption by NI Water i.e. the developer enters into what is known as an Article 161 Agreement with NI Water, to have the sewers adopted after completion of the development. A monetary bond is lodged by the developer and NI Water then has a duty to inspect the 'works' as they progress on site. In the main this arrangement works satisfactorily unless the developer goes into administration; the complexities that then arise depend on what stage the sewers have actually been developed to.

In a number of cases across Northern Ireland several developers have chosen not to submit an application to NI Water for the future adoption of sewers as outlined As a consequence

of this, these sewerage installations are not subject to the specification requirements of NI Water and are installed without NI Water inspection.

Currently local authority Building Control do undertake 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 work for trunk sewers within a development is normally located within the road, this work is usually completed prior to the commencement of Building Control inspections on the construction of the actual development.

Where the sewers are adopted, NI Water then has a statutory responsibility to maintain these public sewers. However, property/homeowners with unadopted sewers and any associated pumping stations etc. are responsible for their 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, collapse, invasion of tree roots, maintenance of pumping stations etc. Homeowners, businesses and developers can apply to NI Water under Article 159 to have the sewerage system adopted retrospectively. However, NI Water may refuse to adopt the sewage system if they believe it has not been correctly constructed and maintained.

In England and Wales, Local Authorities, homeowners and businesses had similar problems which have been highlighted above.

I would refer the Committee to two papers. The first independent research paper was 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 pipe-work serving their property, including private sewers and drains.

Regarding the second paper, 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 July 2003 Defra published a consultation paper which summarised the findings of this 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 these would automatically become the responsibility of water and sewer 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 responsibilities of such, transferred on 1 October 2011.

This transfer provides a solution to a range of private sewer and drain problems affecting householders and businesses. These include a lack of awareness of responsibilities and unwillingness or inability to co-ordinate or contribute to 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 at a time when climate change impacts and housing growth may impose greater demands on drainage systems.

Having a greater proportion of the sewer network in the management of the water and sewerage companies means they will be able to plan maintenance, sewer baiting and resolve problems more easily and comprehensively.

BCNI would ask the Assembly Committee to review the attached paper (Standard Note: SNSC-01514) and consider the benefits that would result in adopting the same position for

the future (at least) in Northern Ireland, which would reflect current practice in England and Wales.

Response on behalf of Building Control Northern Ireland prepared by:-

Jonathan Hayes, Building Control Manager, Armagh City & District Council

Ken Hunter, Deputy Group Chief Building Control Officer, Southern Group Building Control, Craigavon Borough Council

16th March 2012

Building Control Northern Ireland

Standard Note: SNSC-01514
Last updated: 27 September 2010
Author: Oliver Bennett, Policy Analyst
Section: Science and Environment

After a number of consultations the Labour Government announced that approximately 200,000 kilometres of privately owned sewers and lateral drains in England would be transferred to water and sewerage companies from 2011. It also announced the introduction of a mandatory build standard for new sewers, and that new sewers would automatically become the responsibility of water and sewer companies.

The Coalition Government decided to continue with the transfer. On 26 August 2010 draft regulations to effect the transfer from October 2011 were published for consultation.

Contents

- 1 What is a private sewer?
- 2 What are adopted sewers?
- 3 What problems are associated with private sewers?
- 4 Addressing these problems
 - 4.1 The construction of new sewers
 - 4.2 Existing private sewers
 - 4.3 The transfer of private sewers

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

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1 What is a private sewer?

Private sewers are those sewers that have not been “adopted” by the water companies. Sewerage undertakers only have a statutory responsibility to maintain public sewers that they have adopted.¹ Homeowners with unadopted (private) sewers are responsible for their maintenance and the associated costs. It is estimated that nearly half of all domestic properties are served by a private sewer or lateral drain. However, many homeowners are unaware of their liability until a problem develops.

2 What are adopted sewers?

Adopted sewers mainly include those that water companies took over from the public water authorities in 1989 at privatisation. In most cases these are in roads or public open spaces but in certain circumstances they may run through private gardens.²

The Water Industry Act 1991 gave water companies the power to adopt other sewers and disposal works situated within their area or serving the whole or any part of that area.³ Under Section 102(2) of the Act, the owner of the sewer may make an application to the sewerage undertaker to request it to adopt the works. It will only do this if the sewer satisfies a number of considerations listed under Section 102 (5) of the Act, such as the method of construction and its state of repair.

Generally, water companies have only adopted main sewers running underneath the middle of roads; the connecting drains serving individual homes are not adopted and remain the responsibility of householders. Those who have bought ex-council houses are often served by private sewers as sewers serving council estates were usually constructed by the local authorities in their capacity as local sanitary authorities and therefore most are unlikely to have been adopted by the water companies.⁴

Sections 198 and 199 of the *Water Industry Act 1991* require water and sewerage companies to keep records in the form of maps of the location of every water main and adopted sewer vested in them and to make this information freely available for inspection at their offices at all reasonable times. The companies are also required to provide local authorities with copies of sewer maps and any modifications to them. The local authorities in turn must make them available to members of the public. However, there is no obligation for the companies to keep records of connections to water mains or private sewers or drains.

3 What problems are associated with private sewers?

Many homeowners or businesses are unaware that they, sometimes jointly with others, face the costs of sewer maintenance—although the status of the sewers should be evident on house deeds. The water companies in turn have been able to refuse to adopt a sewer if it has not been built to an appropriate standard.

In November 2001, Defra contracted W S Atkins to undertake independent research into the extent of private sewers. In July 2003 Defra and the Welsh Assembly Government published a consultation paper which summarised the findings of this research and sought views on possible solutions for dealing with the problems identified.⁵ The consultation paper identified the following common problems:

1 HC Deb 17 March 1998 c444

2 Ofwat, Information Sheet 14: Responsibility for water and sewerage pipes, June 2002

3 Section 102 (1) (a))

4 Information provided by Ofwat Information Services

5 DEFRA, Review of Existing Sewers and Drains in England and Wales: Consultation Document, July 2003

- a) Many people do not realise they are not served by a public sewer until they are informed by a local water company or council that work needs doing and they are liable.
- b) There can be difficulties in establishing the ownership of, and responsibilities for maintaining private sewers.
- c) There can often be unwillingness on the part of some owners or occupiers of houses to accept their responsibilities, especially after changes of ownership and difficulties in requiring them to contribute towards the cost of repair to the sewers.
- d) The owners and occupiers of houses are often unable to afford the high cost of repairing the sewers and for some this can present severe financial difficulties.
- e) There can be difficulties in getting private sewers adopted by the sewerage undertaker because of the nature of the construction and/or condition of the sewer.
- f) The difficulties associated with property owners being responsible for 'lateral' drains or private sewers situated outside the curtilages of their properties where, for example, they have no control over bodies such as utility companies or highway authorities possibly damaging those drains and private sewers when working in the vicinity.⁶

4 Addressing these problems

The Labour Government sought to tackle the issue by improving the construction of new sewers to prevent future problems and by transferring ownership of existing private sewers to the water and sewerage companies.

4.1 The construction of new sewers

A public consultation exercise was undertaken in 2000 and this indicated that there was support for a rationalisation of the standards and controls for the construction of new sewers. In March 2002 the then Government issued guidelines on one agreed standard applicable to all new-build sewers and drains built from April 2002. The Protocol on Design, Construction and Adoption of Sewers in England and Wales was agreed following discussions with the Building Regulations Advisory Committee, Water UK and the House Builders Federation.⁷

In addition, the Water Act 2003 amended the Water Industry Act 1991 to give the Secretary of State or the Welsh Assembly powers to develop schemes requiring the adoption of private sewers by sewerage undertakers. It also contained provisions requiring all new laterals (the part of the drain between the curtilage of the property and the sewer) which connect to a public sewer to be constructed to a standard that will enable them to be adopted by the sewerage undertaker on completion.⁸

However, a review in 2005 found that these measures had not been successful:

...less than 1% of developments built after the publication of the protocol were designed and constructed in line with the protocol. The main reasons include the cost implications placed on developers to comply with the protocol and its lack of legal strength to obligate developers to comply. The protocol was considered to be out of date, ineffectively regulated and publicised. It is recommended that the requirements of the protocol are made mandatory.⁹

To ensure that new sewers met acceptable standards, the Labour Government proposed to introduce a mandatory build standard for sewers and to require sewerage companies to adopt

6 *ibid*

7 DEFRA Press Release 84/02, Householders to save money on sewers repairs, 5 March 2002

8 Water Act 2003, ss93-99

9 Review on the Performance of the Protocol on Design, Construction and Adoption of Sewers in England and Wales, Defra, March 2005

new sewers where they meet the standard. These powers are contained in the *Flood and Water Management Act 2010*. The build standard would be specified in regulations. However, it is for the Coalition Government to commence these powers as it sees fit.¹⁰

In the consultation on draft regulations to effect the transfer of sewers, the Coalition stated that it “plans to introduce a mandatory build standard for gravity foul sewers and lateral drains that will make the construction of new sewers and lateral drains connecting to the public network subject to national standards”.¹¹

4.2 Existing private sewers

The 2003 Government consultation identified a range of potential options to deal with the problems associated with existing private sewers:

- 1) Transfer of ownership of private sewers and lateral drains to a statutory body
- 2) Transfer of management responsibilities for private sewers and lateral drains to a statutory body
- 3) Adoption of private “lateral” pipes (Sections of private sewers and drains (laterals) within public land (including roads) and connecting with a private sewer would be adopted by the existing sewerage undertaker)
- 4) New enforcing legislation (New legislation relating to private drainage could be introduced so that drainage networks are policed by a statutory body.)
- 5) General legislation improvements and guidance. (Address some of the shortcomings of the current arrangements)

The consultants felt that all these options represented an improvement in the environmental management of the sewer network, but favoured Option 1 as offering potentially the greatest environmental advantages. It was claimed that this option would provide a structured framework for the management of the network.

Local authorities and sewerage undertakers made up the majority of respondents to the consultation.¹² 95% of respondents believed that the current arrangements were unsatisfactory and Option 3 emerged as the favourite. 81% of respondents (including 81% of responding local authorities, and 7 out of 10 sewerage undertakers) favoured a change of ownership in general. 90% of those in favour of a change in ownership preferred to see sewerage undertakers take on the responsibility of private sewers. However, there was also support for new adoption guidelines and procedures specifically for private sewers.

Further consultation was conducted with consumer groups and industry bodies.

4.3 The transfer of private sewers

The Labour Government announced on 22 February 2007 its decision to transfer private sewers and lateral drains to the water and sewerage undertakers in England.¹³ The National Assembly for Wales made a separate announcement in respect of Wales. The cost of the transfer would be met by an increase in sewerage bills (from 7.5p to 23p per week).¹⁴

10 Flood and Water Management Act 2010, s42

11 Consultation on Draft Regulations and Proposals for Schemes for the Transfer of Private Sewers to Water and Sewerage Companies in England and Wales, Defra, August 2010

12 Local authorities and sewerage undertakers made up 71% and 10% of the 186 responses respectively. Defra deposited a summary of consultation responses in the House of Commons Library on 5 January 2004, DEP 04/146

13 Defra, News Release, 22 February 2007

14 Private sewers and drains transferred to water company ownership, Defra news release Ref: 390/08, 15 December 2008

Further consultation took place in February 2007 about how such a transfer should take place. In December 2008 the Labour Minister announced that the transfer of lateral drains and private sewers in England would begin from 2011. A Defra press notice provided more information:

Approximately 200,000 kilometres of privately owned sewers and lateral drains in England will be transferred to water and sewerage companies from 2011, removing millions of householders from the risk of expensive repair bills, Environment Secretary Hilary Benn confirmed today.

Currently, if a private sewer or lateral drain needs repairing, the bill is picked up by householders, even if the problem is outside their property boundary. Most householders don't even know the sewer or drain is their responsibility as it is not apparent when buying a property, and their insurance policies are unlikely to cover wear and tear.

It is estimated that well over half of all houses in England have a private sewer or lateral drain, the part of a drain that lies outside the property boundary.

Mr Benn said:

"Millions of householders are unwittingly sitting on the ticking financial time bomb of private sewers and lateral drains. They may not realise it, but if something goes wrong they have to pick up the bill. The transfer to water and sewerage companies will create a fairer system for all and save many households the agony of finding thousands of pounds to pay for repairs."

There are approximately 300,000 kilometres of public sewers in England operated and repaired by water and sewerage companies. A further 200,000 kilometres of pipework connects to the public system but, by default, remains the responsibility of householders they serve. Many people will be unaware that they own the sewer or lateral drain until problems occur. This can result in people having to find thousands of pounds for repairs or relying on contributions from neighbours as the sewer will serve more than one property.

An extensive review of private sewers began in 2001, prompted by the concerns of householders and a consultation in 2003 revealed a high level of support for transfer. Defra looked at how this transfer could be achieved in a further consultation in 2007.

The costs of transfer will be met by an increase in the sewerage element of bills across the nine sewerage companies currently estimated to be around 7.5 pence to 23 pence a week.¹⁵

However, the transfer required the approval of regulations by Parliament. Draft regulations were due to be published by the Labour Government and consulted on in 2009 so that the transfer could occur in April 2011—but that did not happen.¹⁶

The Coalition Government decided to continue with the transfer. On 26 August 2010 draft regulations to effect the transfer from October 2011 were published for consultation. The Minister, James Paice MP, said:

I am pleased to announce that on 26 August 2010 I published for consultation draft regulations to effect the transfer of private sewers into the ownership of the statutory sewerage companies in England from 2011. The consultation paper sets out the Government's intentions and provides an opportunity for interested parties to respond with their views on the accompanying draft regulations. A copy has been placed in the Library of the House.

The decision to transfer follows an extensive review of the arrangements for private sewers and laterals in England and Wales. Existing private sewers and lateral drains (that part of the drain that extends beyond the property boundary) are currently the

15 Private sewers in England and Wales, Defra Press Notice, Ref: 390/08,15 December 2008 [on 1 February 2010]

16 Private sewers in England and Wales, Defra Press Notice, Ref: 390/08,15 December 2008 [on 1 February 2010]

responsibility of the owners of the properties they serve. This fact typically comes as a surprise to owners, who usually assume that the sewer and lateral drain serving their property are the responsibility of the local sewerage company or local authority.

Private sewers serve more than one property so ownership is shared and usually a large extent of the sewer will lie outside a property's own boundary. Lateral drains serve one property but always lie outside the property's boundary. Transfer provides the only comprehensive solution to a range of private sewer and lateral drain problems affecting householders. These include a lack of awareness of owners' responsibilities and unwillingness or inability to co-ordinate or contribute to potentially high costs of maintenance and repair. It will bring simplification and clarity to owners, local authorities and sewerage companies, all of whom typically become involved when these problems arise.

Transfer will also significantly help address a lack of integrated management of the sewerage network as a whole, and provide much greater efficiency of effort, environmental stewardship and expenditure at a time when climate change impacts and housing growth may impose greater demands on urban drainage systems. Having a much greater proportion of the sewer network in the management of the water and sewerage companies means they will be able to plan maintenance and resolve problems more easily and comprehensively. The Government are also taking steps to stem the proliferation of newly built private sewers in order to prevent the recurrence of existing problems in the future.

Subject to approval of the regulations, transfer will take place from October 2011 in order to allow the water industry and those businesses operating around it sufficient time to prepare for transfer. The costs of necessary future improvement and maintenance will, post transfer, be met by an increase in the sewerage element of bills for the generality of customers. Although these costs cannot be stated now with certainty, Ofwat estimates indicative increases of around £3 to £14 per annum across the water and sewerage companies in England.¹⁷

Citizens Advice

Sent: Mon 13/02/2012 09:14

Re: The Committee for Regional Developments Inquiry into Unadopted Roads in Northern Ireland

Andrew

Thank you for your letter. We won't be making any submission to this enquiry.

regards

Derek Alcorn

Chief Executive
Citizens Advice

Conaire McNeary

Sent Wed 11/04/2012 20.14
committee.regionaldevelopment@niassembly.gov.uk

Dear sir / madam

I am currently residing in Ardess Demesne near Kesh in County Fermanagh, we moved into the property nearly five years ago in July 2007. We were the first residents to move into the development and over the past few years three more houses have been built and occupied. The construction on site then suddenly ground to a halt and nothing has been done to improve living conditions for the current residents. My wife and I are particularly concerned as we have two small children aged three and one and a half, there are roof trusses, scaffolding poles and a whole array of other potentially hazardous materials on site that could cause harm. The site is not only an awful eyesore but is also not screened off allowing access for our children to 'play' amongst these materials. I would simply like to know if anything can be done we have been extremely patient regarding this issue and fully understand the impact that the recession has had on the property market but this current situation is simply unacceptable. We have highlighted our concerns to the developer and he has simply stated that he has little to no money and can't do anything to help us at this time.

One of the residents has contacted our local councillor Bert Johnston to try and release bonds to get the foot paths, street lighting and the tarmac access lane completed. Unfortunately this has not been successful to date and has highlighted another problem the sewers are not fit for purpose and this means that the bonds cannot be released to the Roads Service to complete works on the footpath, street lighting and access lane. It is my understanding that the sewerage system was a temporary measure and should have been upgraded prior to us moving in back in July 2007.

We are now at the stage of our lives where our house is getting a little small for our expanding family and we would like to move to something a little bigger. Unfortunately we have been informed that the issue over the sewers and the fact that the bonds cannot be released may render our property unsellable and effectively worthless! We have also been told to check our household insurance as a temporary sewerage system may invalidate the policy.

We have found the whole scenario extremely upsetting and are devastated to discover that we are at the mercy of Mr Hendron the developer who seems to be unwilling and unable to progress the site beyond its current appalling state. I have attached a couple of photographs to try and illustrate what we are confronted with on a daily basis when we step out of our home.

Any help or advice in progressing this issue would be greatly appreciated.

Regards

Conaire McNeary

Cookstown District Council

Sent: Mon 20/02/2012 12:18

The Committee for Regional Developments Inquiry into Unadopted Roads in Northern Ireland

For the attention of Paul Carlisle

The impacts of unadopted roads / housing developments in our district are primarily those which may potentially arise in relation to our refuse collection service as outlined below: -

Insurance companies refusal to cover vehicles entering unadopted roads.

Missed bins due to site traffic blocking roads

Health and safety issues for our staff and the general public

The damage to vehicles and tyres e.g. from "raised" manholes and the subsequent cost of repairs

Claims from developers as a result of damage to uncompleted road surfaces by heavy refuse collection vehicles

On-going complaints from residents within developments where bins have to be taken to designated collection points over a long period of time.

I trust this information is of use to you.

Derek T Duncan

Director of Operational Services

Cookstown District Council

Tel No 028 8676 2205

Fax No 028 8686 0680

Craigavon Borough Council



Central Services Depot
Carn Industrial Estate
Portadown
Craigavon
BT63 5WG
Tel: 028 3833 9031
Fax: 028 3839 6060
www.craigavon.gov.uk

15th March 2012

Mr Oliver Bellew
Room 435
Parliament Buildings
Belfast BT4 3XX

Dear Mr Bellew

Re: Regional Development Committee Inquiry into Unadopted Roads

Please find below our comments relating to the impact of Unadopted Roads on the ongoing Operations of Craigavon Borough Council.

In general, we endeavour to provide a refuse collection and street cleaning service to all rate payers. This service is difficult and on occasions cannot be provided to unadopted areas, where the roads/infrastructure has not been completed. The Research and Briefing paper NIAR 767-11 states that there are still 141 Unadopted Roads in Craigavon Borough. This provides significant challenges to us the provider of statutory services and many of our ratepayers, who are unable to enjoy many of those services.

The main issues we have are as follows.....

GENERAL

HEALTH & SAFETY

Issues due to uneven roads/paths, causing tripping hazards, mechanical handling difficulties, reduced access. Also there is likely to be construction traffic/road surfacing whilst the development is being completed.

Potential vehicle & sweeper brush damage due to incompletd roads, raised manhole covers and high curbs.

REFUSE COLLECTION

Initially residents have to bring their bins to a common collection point at the edge of the development. This can be 2-300m, causes mix ups/loss of bins and annoys the owner adjacent to the multiple bin collection point.

At this time, we survey the development and determine whether it is safe to access. If not, then we do not go in.

At this time there is no access for assisted lifts (pull outs) so older/disadvantaged residents will not receive this help.

When there is some road surface we can enter the development for refuse collection, but



INVESTOR IN PEOPLE

must be careful as there is additional risk of injury to our staff from the H&S issues above. Also there can be difficulties moving the heavy bins over uneven roads/paths, high curbs and into the Refuse Collection Vehicle's (RCV or bin lorry) bin lifters.

STREET CLEANING

We cannot use mechanical street cleaners on unfinished roads. This limits the speed & effectiveness of the cleaning

Litter picking & dog bin services can be provided, but with additional H&S risk.

INSURANCE & CLAIMS

Unadopted developments present greater risk to their residents. CBC could be open to claims once any level of service starts.

Unadopted roads are more likely to be damaged by our 26Te RCV's and CBC could be open to claims for damage to drainage systems & unfinished roads/paths.

Please advise if you need further information or clarification.

Yours sincerely



Stewart Kerr
Operations Manager

Craig Fitzgerald

Sent Wed 04/04/2012 11:39
committee.regionaldevelopment@niassembly.gov.uk

Good Morning

I currently reside in a property in the "Tudor Gardens" area of Carrickfergus which is a small no through residential area. I have purchased this property since 2005 and the road/s in and out of this development were **sewered, levelled, laid in asphalt construction along with street lighting and pavements and made good** since 2006 by ACC (Antrim Construction Company) building contractors and have been fully serviceable since this period by the residents of this development. This development consists of 27 properties and falls under the EDEN ward of Carrickfergus Borough. I am paying rates for this property and have been for a number of years and the streets have never been swept either manually or mechanically in this time. I have contacted my local council (Carrickfergus Borough Council) on a number of occasions who cannot give me a straight answer whether or not the roads have been ADOPTED or not which is unsatisfactory in 2012. I am becoming increasingly frustrated at the lack of assistance in this matter and think that it is a disgrace that my rates have gone up every year since myself and family moved into this property and they now exceed over a four figure sum yet I still cannot get the road/s swept in this area. I can tell you that the department of environment have been out on one occasion that I can recall and have chemically treated the road edges for weeds.

I am asking for your assistance in this matter or if i could ask you to make my local MP representative aware of the difficulties that I am facing so he/she can contact me and assist me with the answers that I require in order to either have the streets in my area swept or a discount from my rates bill as a result of the streets not being swept. I have added the definition of an ADOPTED road to this e-mail and do not believe that my road falls into this category.

For the purposes of the inquiry the following definition of an unadopted road is suggested:

An unadopted road is one where a street planning function has been exercised, a bond has been placed under the Private Streets (NI) Order 1980 and the Department is not satisfied that the street has been **sewered, levelled, paved, channelled, made good and lighted**.

The Terms of Reference are defined as follows:

- To identify the extent, types, distance and costs of bringing unadopted roads to a level where the Department is content to adopt.
- To define the current processes required to ensure that undeveloped roads are constructed to a standard that allows for statutory adoption by the Department.
- To identify the key stakeholders in the above processes and all statutory and other processes and responsibilities they have accountability for.
- To review the legislative processes in place within Northern Ireland to ensure that it meets with all EU and other jurisdictional and policy requirements.
- To benchmark the Northern Ireland legislative processes against those currently in place in the UK and the Republic of Ireland.

I look forward to hearing from you

Mr C Fitzgerald
Tudor Gardens
Carrickfergus

[Redacted] (voice mail available)

Danny Kinahan MLA

Sent: 20 February 2012 11:42:21 GMT

Subject: DRD Committee - Road Bonding Issue

Dear Chair

I am concerned that the DRD investigation into the Roads bonding issue is somewhat missing the point – namely that Private Roads become a matter between Planning and the various developers and therefore fall under the jurisdiction of the DoE rather than DRD.

I did make the point in my recent speech but felt that I would like to reiterate the distinction.

Very best regards

Danny Kinahan MLA

South Antrim

Department for Regional Development



Paul Carlisle
Clerk to the Committee for Regional Development
Committee Office
Room 402
Parliament Buildings
BELFAST
BT4 3XX

CENTRAL MANAGEMENT BRANCH

Room 413c
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BT2 8GB.

Telephone: (028 905) 41140
Facsimile: (028 905) 40064
Email: alan.doherty@drdni.gov.uk

Your reference:
Our reference:

20 March 2012

Dear Paul

COMMITTEE INQUIRY INTO UNADOPTED ROADS

Thank you for your letter of 9 February 2012 on behalf the Committee for Regional Development, requesting written evidence for their Inquiry into Unadopted Roads in Northern Ireland

Please find enclosed, the information you require.

This letter and associated attachments are disclosable under FOI.

Yours sincerely,



ALAN DOHERTY
Assembly Liaison Officer



THE COMMITTEE FOR REGIONAL DEVELOPMENT'S INQUIRY INTO UNADOPTED ROADS IN NORTHERN IRELAND

The Department for Regional Development offers the following submission for consideration in the Committee for Regional Development's Inquiry into Unadopted Roads in Northern Ireland.

Where applicable, the topics listed are set out as per the Committee's Terms of Reference for the Inquiry:

- 1. To identify the extent, types, distance and costs of bringing unadopted roads to a level where the Department is content to adopt.**

The terms of reference of the Inquiry indicate that it is in relation to unadopted roads governed by the Private Streets (Northern Ireland) Order 1980 and the Private Streets (Amendment) (Northern Ireland) Order 1992.

The Private Streets Order covers all types of roads which are determined by the Department as appropriate for the proposed development. The roads must be built in accordance with the determined layout, and they must be constructed in accordance with the standards prescribed in the Private Streets (Construction) Regulations (Northern Ireland) 1984 and the Private Streets (Construction) (Amendment) Regulations (Northern Ireland) 2001.

The Department's records show that at the end of December 2011, 3148 roads had been determined for adoption, but not yet adopted.

Information regarding the total length of these roads is unavailable, however, the value of bonds currently in place is approximately £112.6 million.

2. **To define the current processes required to ensure that undeveloped roads are constructed to a standard that allows for statutory adoption by the Department.**

The 'Private Streets' Process

The Private Streets (Northern Ireland) Order 1980 and the Private Streets (Amendment) (Northern Ireland) Order 1992 provide the statutory basis for the adoption of roads constructed by Developers.

Where a planning application requires the laying-out or construction of streets, Article 3 of The Private Streets (Northern Ireland) Order 1980 requires the Department to determine the width, position and arrangement of the streets.

The Order further provides for the Department (Roads Service) to adopt the determined layout on satisfactory completion by the developer. Developers are required to enter into an Agreement with the Department so that, on satisfactory completion of the road construction, the roads become public roads. The Agreement is normally provided under Article 32 of the Order.

Only those carriageways and footways, cycle tracks, footpaths, visibility splays and verges that the Department considers necessary for public access and passage, will be adopted, provided that they are laid out in accordance with the "Creating Places" design guide and constructed to the standards set out in the Private Streets (Construction) Regulations (NI) 1994.

Access roads serving new residential developments in excess of 5 dwellings will normally be determined and subsequently adopted provided that they are designed and constructed to the appropriate standards.

Developers are encouraged to discuss road layouts with the relevant Roads Service Development Control officer early in the design process.

The Private Streets function and process may be described under the following five steps: -

- a) Determination;
- b) Bond and Agreement;
- c) Construction and Inspection;
- d) Adoption; and
- e) Intervention.

a) Determination

Where a Planning Application includes the construction of streets, the Department may exercise its "street planning function" to determine the width, position and arrangement of the streets. The Private Streets (Construction) Regulations (Northern Ireland) 1994 and the Private Streets (Construction) (Amendment) Regulations (Northern Ireland) 2001 (referred to as "The Regulations") prescribe the standards for the construction of the streets.

b) Bond and Agreement

The Private Streets Order provides for prior provision to be made to meet street works expenses, and requires a developer to enter into a formal agreement for the construction and subsequent adoption of the Private Streets. The Developer is required to "secure the due performance of the agreement by means of a guarantee bond". The Order directs that "no work shall be done in or for the purpose of erecting a building" until Roads Service has notified the developer of the sum to be paid or secured, and the developer has entered into an agreement "to pay such further sum, if any, as may be recoverable in respect of the costs of street works".

c) Construction and Inspection

Roads Service personnel inspect the construction of private streets proposed for adoption and the bond is reduced in stages as work is completed satisfactorily.

When Roads Service is satisfied that the “street has been provided in conformity with a determination” and “all works which are reasonably necessary to bring the street into conformity with [the construction] regulations – have been executed”, a preliminary certificate to that effect will be issued to the Developer. Roads Service normally retains a minimum of 10% of the bond at this stage and the issue of a preliminary certificate marks the start of a one-year maintenance period.

d) Adoption

Providing the street “has been properly maintained” during the maintenance period and “any defects occurring during that period have been made good”, Roads Service will normally issue a further certificate and “declare the street to be a public road”. The remnant of the bond retained during the maintenance period is cancelled at this stage.

The Order directs (Article 7.1) that Roads Service shall not adopt a street unless it has been determined as a Private Street, at least one half of the buildings are complete and is joined or likely to become joined to the public road network.

e) Intervention

Where the construction of a Private Street is not progressing satisfactorily, Roads Service may issue “a notice under Article 11 [of The Order], requiring the execution of all works which are reasonably necessary to bring the street into conformity with regulations”. Where the requirements of an “Article 11” notice are not complied with, Roads Service may proceed to execute the works and recover the costs of the works and expenses, including the cost of “surveys, superintendence and notices”. The Private Streets function from Application through Determination to Adoption is conducted within a prescribed statutory arrangement that offers the opportunity for a developer to appeal the Department’s notices.

Roads Service must always notify a developer at each stage of enforcement proceedings, and this often prompts the developer to carry out the necessary remedial works.

Roads Service intervenes to complete private streets where the developer has ceased to trade, or has failed to complete streets (defaulted). In such cases, the developer must be served notice under our legislative procedure. Roads Service employs contractors to complete the necessary works, adopts the new roads, and recoups the costs from the developer or bond surety.

3. To identify the key stakeholders in the above processes and all statutory and other processes and responsibilities they have accountability for.

Key stakeholders in the Private Streets process include:

- The Department for Regional Development (Roads Service), which is responsible for the determination of Private Street layouts, for ensuring that the roads are constructed to the appropriate standards, for adoption when completed, and for enforcement action, if a developer cannot complete the street works as originally planned.
- Developers, who have a legal duty to comply with planning legislation and to make provision for the cost of street works on their development(s), as required by the Private Streets Order.
- Department of the Environment Planning Division, which is responsible for granting planning approval, including issuing the Private Streets Determination as advised by Roads Service. Planning Division is responsible for enforcement of planning conditions in accordance with the planning approval granted to a developer.
- Conveyancing Solicitors are responsible for representing their clients' interests. The homebuyer's conveyancing solicitor should ensure that everything is in order, including checks such as property certificates, to safeguard their clients.
- Bond Providers, such as the National House-Building Council, Banks and certain Insurance Companies. The bonds are legally binding agreements, and in the event

20/03/2012 12:58:00

of the developer not completing the streets as agreed, Roads Service can access the bond monies and arrange for completion of the necessary works and then adopt the roads into public ownership.

4. To review the legislative processes in place within Northern Ireland to ensure that it meets with all EU and other jurisdictional and policy requirements.

Roads Service considers that the current Private Streets legislation in Northern Ireland complies with EU and other jurisdictional and policy requirements.

5. General Information on Bonds for Private Streets Developments

The surety a Developer is required to put in place prior to commencing a Development.

- The Private Streets Order requires a developer to enter into a formal agreement for the construction and subsequent adoption of the Private Streets, prior to carrying out work for the purpose of erecting a building.
- The Developer is required to secure the agreement by means of a guarantee bond. It is illegal to begin building work without this in place.
- Where Roads Service becomes aware of work starting without an Agreement and Bond, it takes this up with the developer and can ultimately prosecute.

How Roads Service monitors the construction process and adopts a private street.

- Roads Service carries out inspections at key stages during construction to ensure that the new street is up to standard.

- When the street has been completed as agreed, the developer offers it for adoption, and following a one-year maintenance period, it becomes a public road maintained by Roads Service.
- For a street to be adopted, at least one half of the buildings should be complete and it should be joined, or likely to become joined, to the public road network.

Typical problems that the Department may encounter during the construction process.

- Developers proceeding without an Agreement or Bond.
- Roads not being completed in compliance with the Determination.
- Issues with sewers and drains.
- Road construction not keeping pace with development.
- Developer ceases work on site, or goes into liquidation.

6. Further Information

'Development Control – Developers Information' is available via the Department for Regional Development internet site at the following link:

<http://www.drdni.gov.uk/index/roadsni/content-newpage-4.htm>

Department of Finance and Personnel

Rating Policy Division

Longbridge House, 20-24 Waring Street,
Belfast, BT1 2EB
Tel No: 028 9034 7468 (GTN: 58468)
Fax No: 028 9034 7435 (GTN: 58435)
Email: brian.mcclure@dfpni.gov.uk



Paul Carlisle
Clerk to the Committee for Regional Development
Room 254
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

21st March 2012

Dear Mr Carlisle,

The Committee for Regional Development's Inquiry into Unadopted Roads in Northern Ireland

You recently wrote to Rating Policy Division requesting evidence for the above inquiry.

Having studied the terms of reference I would advise that that we would have no responsibility for the matters covered under the Committee's Terms of Reference. The Committee may however be interested in how the rating system takes these matters into account, and this is explained as follows.

Rates are a tax on property rather than a charge for the provision or consumption of local and regional services. There is no specific element of an individual's rates bill which is ring-fenced for any specific service rendered or adjusted on the basis of the amount of services that they can use or have access to. The rating burden is shared out amongst the community based on relative property value.

The system adopts individual assessments of value for each and every privately owned or rented house in Northern Ireland. These individual assessments are based on valuations that naturally take into account all the general and unique advantages and disadvantages that a hypothetical purchaser would take into account if purchasing the house in its **current state**; albeit at a fixed valuation date. This includes the features of the house itself (size, age, accommodation, type) but environmental and locational factors are important and this encompasses the state of the roads and access to services.

Officials in Land & Property Services have reviewed the rateable Capital Value assessments of a number of properties located in estates in which development has stopped. Where circumstances are particularly severe a reduction in capital value has been applied of up to 20%.

In response to suggestions from some quarters that a blanket exemption should be granted, the Minister takes the view that this is not the way to address the issue, given that it would lead to an inconsistent treatment of ratepayers. There are many ratepayers with other issues affecting their properties, who would object to a special concession being made to homeowners in ghost estates, as it would inevitably mean that everyone else would pay a

little more in rates to make up the shortfall or else public services would have to be cut back even more; particularly as allowance can already be made in the valuation assessment.

I hope you find this reply helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read "Brian McClure". The signature is written in a cursive style with a small dot at the end.

BRIAN McCLURE

Derry City Council



DERRY CITY COUNCIL

Our Ref: AT/BMcL

16th March 2012.

Mr. P. Carlisle,
Clerk to the Committee for Regional Development,
Northern Ireland Assembly,
Room 254,
Parliament Buildings,
Ballymiscaw,
Stormont, BT4 3XX

Dear Mr. Carlisle,

Committee for Regional Development
Inquiry into Unadopted Roads in Northern Ireland

I refer to your correspondence dated 10th February 2012 regarding the above.

This matter was considered by the Council's Regional Services Committee at its meeting held on 6th March. Following discussion, the Committee recommended that the Inquiry be requested to consider the following matters:-

1. The need for a shorter timeframe between completion of housing and road adoptions.
2. The need for developers to maintain the cleanliness of roads during the construction phase of developments.
3. The need to undertake an audit of unadopted roads within the Derry City Council to include the reasons for non-adoption, particularly in relation to partially completed and ongoing developments and what action Roads Service are taking to progress these adoptions.

/ The necessity

Council Offices, 98 Strand Road, Derry, N.Ireland BT48 7NN


telephone: (028) 7136 5151 textphone: (028) 7137 6646 fax: (028) 7136 8536 web: www.derrycity.gov.uk

Mr. P. Carlisle
16th March 2012

-2-

4. The necessity to monitor longstanding issues where roads have not been adopted due to developers / contractors going out of business and what action is being taken in respect of same.

Yours sincerely,


_____ *BME*

Anthony Tohill
Strategic Director

Down District Council

Down District Council Submission to The Committee for Regional Development Regarding the Inquiry into Unadopted Roads in Northern Ireland

Down District Council Response

Down District Council welcomes the Committee for Regional Development inquiry into unadopted roads in Northern Ireland.

The majority of unadopted roads are in local housing developments with the result that local residents are unable to avail of services e.g. refuse collection from their houses instead they are required to leave their bins at a central collection point to be emptied. This causes inconvenience to the residents particularly the elderly and infirm and must not be understated. Many people who live in unadopted roads feel they are cursed with a problem that no one wants to know about they can even be legally liable for accidents involving passers-by. Although the public have a right of way and do not contribute to the maintenance of an unadopted road they can put in a claim if injured in an accident attributable to poor surface.

Council agrees, as stated in the terms of reference, for the need to identify the costs involved to bring such roads to an adoptable standard and the clear identification of all involved and the roles and responsibilities they have in this area. An example of where such clarity is required is 9 (3) of the Private Streets (Northern Ireland) Order 1980 titled "Adoption of streets on request of, or with consent of, owners or occupiers of adjoining land" which states:

Where a street meets the conditions set out in paragraph (2) (a) or (b) but the Department is not satisfied that the street is in all respects fit and proper to become a public road, the Department may, in exceptional circumstances of such a kind as it may determine, declare the street to be a public road, and the street shall be a public road from the date of the declaration.

Clarity is required regarding what are "exceptional circumstances" and the process to be followed in the making of the Department's decision in such cases.

Regarding new housing developments the construction company / builder currently place's a bond to cover various costs in the event of bankruptcy or non completion of the development. Council feel the Committee needs to satisfy itself as to:

- (1) The size of the bond, is it adequate to cover any costs that may arise on non completion of construction?
- (2) Regarding the timescale allowed for full completion of construction consideration should be given to a defined time-frame for completion of unadopted roads. In today's economic environment there are a number of new developments awaiting completion with no known timescale.
- (3) The number of times the Department have enforced the use of a bond to bring a non completed development up to adoptable standards.
- (4) Does the DRD have sufficient staff to enforce the regulations?
- (5) Procedures to be put in place to deal with "exceptional cases" for example Ballyhornan, County Down, an area which has a number of unadopted roads where no developer exists. Council ask for Ballyhornan to be included as a special case requiring special consideration and action.

Council also considers there are a number of other questions

Whilst recognising the definition of an unadopted road for the inquiry Council ask the Committee to consider such cases where no street planning function has been exercised, no bond has been placed

and roads exist which are not of a standard to be adopted. In these cases the costs to bring up to an accepted standard can be beyond the means of the residents living in such conditions.

To address these exceptional cases, which are normally a hangover from the past, Council believe possible solutions are:

(a) to establish a fund which the Department can access to take action to adopt such roads

or

(b) allowing the Department to act as guarantors for loans by householders taken out through financial institutions and ultimately claimable against the estate or sale of the property of the residents affected. This option would give householders a choice they could take out a conventional loan and finance the entire cost of making up the road ready for adoption or they could pay part of the cost or they could pay nothing up front and have the cost of the loan set against the value of their homes.

Liam McLernon

Equality & Policy Officer

15 March 2012.

Fermanagh District Council



Brendan Hegarty
B.S.Sc. F.C.A.
Chief Executive



Technical Services
Killyvilly, Tempo Road, Enniskillen, Co. Fermanagh,
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16 March 2012

Mr Paul Carlisle
Clerk to the Committee For Regional Development
Room 254
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Mr Carlisle

Re: The Committee for Regional Developments Inquiry into Unadopted Roads in Northern Ireland

In response to the request for evidence relating to issues around Unadopted Roads in Northern Ireland, Fermanagh District Council has considered the paper presented and makes the following comments:

1. In January 2012 there were 193 'determined' sites in Fermanagh of which 80 had bonds in place. The value of the bonds or the cost to bring to standard the roads listed was not given.
2. The Council considered in detail the adoption process and deficiencies were highlighted e.g. level of bond, lack of index linking etc.
3. Roads Service, NI Water, Councils and Solicitors are all stakeholders but it was emphasized that Roads Service and the Solicitors are the key players in the adoption procedure. It should be noted that this Council raised this matter previously with The Law Society of Northern Ireland.
4. A major issue in the adoption process is the legal transfer of a house or site from the developer to the new owner without the right of access being adopted.
5. The Council is not familiar with procedures in place in the rest of the UK or Republic of Ireland.

We trust that these issues and concerns can be taken into consideration and progress made in expediting a robust adoption procedure for old and new developments.

Yours sincerely

Gerry Knox
Director of Technical Services

Robert Forde M.C.I.E.H. M.I.O.S.H. M.I.Mgt
Director of Environmental Health

Robert Gibson B.Sc.
Director of Leisure, Tourism & Arts

Brendan Hegarty B.S.Sc. F.C.A.
Director of Finance & Information Technology

Gerry Knox B.A.
Director of Technical Services

Desmond Reid F.R.I.C.S. D.M.S.
Director of Building Control

Land and Property Services



Land &
Property
Services®

John Wilkinson

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Paul Carlisle
Clerk to the Committee for Regional Development
Room 254
Parliament Buildings
Ballymiscaw
Stormont
BELFAST BT4 3XX

28th February 2012

Dear Mr Carlisle

The Committee for Regional Development's Inquiry into Unadopted Roads in Northern Ireland

Thank you for your letter of 15th February 2012 and the invitation to provide evidence regarding the above inquiry. However, having studied the terms of reference, I can advise that Land & Property Services has no responsibility for these matters and therefore I do not intend to submit evidence.

Yours sincerely

A handwritten signature in black ink that reads "John Wilkinson". The signature is written in a cursive style with a large, looping initial 'J'.

John Wilkinson

Margaret Richie MP MLA

Margaret Ritchie MP (South Down)

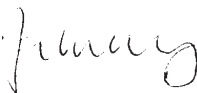


HOUSE OF COMMONS

Monday 12th March 2012 LONDON SW1A 0AA

Our Ref:R/C/R/2/12

Mr Jimmy Spratt
Chairperson
The Committee for Regional Development
Room 435
Parliament Buildings
Stormont
Belfast.
BT4 3XX

Dear 

RE: Committee Inquiry into unadopted Roads

I am writing to request that the Committee under this inquiry commit specific resources to investigating the following cases;

1 - Bishopcourt/Ballyhornan, Co. Down.

Since the MoD withdrawal from the area, the former RAF accommodation has been changed to varying degrees and standards, into residential accommodation. This includes a mixture of permanent residents and holiday home owners but the last few years have seen a trend towards permanent occupation. However basic physical infrastructure in the area is wholly inadequate to support the population in the area.

While there has been some private investment in homes in the Bishopcourt/Ballyhornan area, there has been little investment in basic infrastructure. The area lacks the basic infrastructure common to "normally" constructed residential settlements and significant deficiencies are evident in roads, water and sewage provision. These problems are particularly acute in Killard Square and Killard Drive, where the procedure for adopting these services has not been followed through and they remain unadopted by the relevant authorities. As well as contributing to the general impression of dilapidation and unkemptness of the environment, this situation has led to a number of specific problems. These include the periodic overflowing of the sewage system resulting in raw sewage being deposited in homes and gardens. Incidences of a brown tinge and suspension in water

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Margaret Ritchie MP (South Down)



HOUSE OF COMMONS

LONDON SW1A 0AA

supplies have also been reported. Roads are pitted with potholes and inadequate for normal traffic. The roads, water and sewerage infrastructures are not of adoptable standard, so the Department of Regional Development cannot fund their upgrading within existing legislative and policy constraints.

DoE Planning Service has designated Killard Drive and Killard Square as Housing Policy Areas in the draft Ards and Down Area Plan. It notes that redevelopment of these from temporary units to permanent accommodation must consider various issues. Planning Service highlights the necessity of strengthening and widening the road connection to the main road, implementation of footpaths, street lighting and appropriate traffic calming provision.

The environmental problems outlined above are accompanied by some significant social issues. Bishopscourt/Ballyhornan currently ranks 75th in the Noble Index of deprivation, placing it in the bottom 2% of the most economically deprived enumeration districts. Ballyhornan /Bishopscourt stands out starkly as among the most deprived districts in the east of Northern Ireland. Judged by the Noble statistics, the area suffers greater disadvantage, than for instance, the most deprived area of Downpatrick and economically disadvantaged rural areas, like Crossmaglen, Co. Armagh, Devenish and Co. Fermanagh. It is on a par with many of the most deprived areas of West Belfast.

As stated the current restrictions which the various Government Departments currently operate under has not allowed them to adopt services in this deprived area e.g. roads. A method must be put in place which will allow roads in deprived areas that do not reach the minimum adoptable standards to be brought up to these standards and adopted by the Department.

2 – Roads Abandoned as a result of the reform of local government in Northern Ireland in 1973 - transition from urban and rural council responsibility to Roads Service

Throughout the Constituency of South Down, and I understand that preliminary reports have been compiled by Roads Service, there are many roads that have become abandoned. Many of these abandoned roads are the result of the reform of local government and transfer of powers in 1973. I would urge that where clear evidence of a former public road is presents that the Department formulate a means whereby adoption can be undertaken without expense to private home owners

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HOUSE OF COMMONS
LONDON SW1A 0AA

I trust that this is in order and I look forward to your reply

Yours sincerely

A handwritten signature in black ink that reads "Margaret Ritchie".

Margaret Ritchie MP MLA

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National Asset Management Agency



Gníomhaireacht Náisiúnta um Bhainistíocht Sócmhainní
National Asset Management Agency

Paul Carlisle
Clerk to the Committee for Regional Development
Room 254
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

16th February 2012

RE: The Committee for Regional Development's Inquiry into Unadopted Roads in Northern Ireland

Dear Paul

Thank you for your letter dated 9 February, 2011 to our Chief Executive in relation to the above Inquiry.

NAMA has no particular comments to make on the matter.

Thank you for affording us the opportunity to contribute.

Yours sincerely

Martin Whelan
Head of Relationship Management

Newtownabbey Borough Council

- (a) the Council welcomes the opportunity to submit comments on the problems associated with unadopted roads
- (b) the Council will welcome initiatives/legislation that will reduce the number of unadopted roads and the length of time that they remain unadopted
- (c) the Council is concerned over the number of unadopted roads in the Borough and, although the Council is not experiencing the number and types of problems in other Boroughs, is fully aware of the potential effects on Council provided services which may occur
- (d) the Council is concerned over the problems associated with sewers, sewerage and domestic water supplies. The Council believes that the adoption of sewers and water supplies should be separated from the adoption of roads and should be carried out at a much earlier stage, when any problems identified could be resolved before the road surface is finally laid

The Council believes that the separation should be based in statute making compliance much easier to police.

The Council believes that there is a need to draw up and agree with both the construction industry and NI Water, standards for sewerage and domestic water supply systems and to have best practice made more readily available

- (e) the Council believes that the overall adoption of a road needs to be a staged process which can be linked to increasing the bond should new statutory deadlines in the process not be met
- (f) the Council believes that many of the problems occur because of a lack of communication between the various organisations involved and recommends more collaborative working between contractors, agents, developers, Roads Service and the Planning Service before new developments start.

The Council believes this will be very helpful to ensure that developers meet already established standards for matters like street lighting and kerb heights

- (g) the Council believes more information is needed about the status of back alleyways and the need for an interagency approach to resolve many of the problems associated with the ownership of, access to and right of way through back alleyways
- (h) the Council is concerned over public Rights of Way. The Council's responsibilities under the Access to the Countryside Act may be at odds with the owner of the land to which a Right of Way applies particularly with regard to the upkeep. This is of particular concern when the Right of Way becomes an unadopted road
- (i) the Council is concerned that a road cannot be gritted until it becomes adopted and that further consideration needs to be given by Roads Service to this policy decision
- (j) the Council supports the following recommendations made by the Northern Ireland Local Government Association(NILGA)
 - (i) NILGA calls for an urgent review of the current Adoption of Streets Order to include protection against incomplete developments and to give more powers of enforcement to Roads Service and DOE Planning Service with improved co-ordination between both organisations. In particular, it is imperative that the Statutory Orders 'Bond' is strengthened to guarantee the proper completion of roads by developers, or, if necessary, by Roads Service so that residents

are afforded proper protection. This review should also take account of the anomalies which exist for residents currently living in up-adopted developments

- (ii) NILGA recommends that the level of bond assessed needs to be increased and should have an inflationary element built in to take care of delayed adoptions
- (iii) NILGA respectfully and firmly recommends that DRD Roads Service is encouraged to actively target developers who have responsibility for un-adopted streets and establish a time bound, fine oriented, programme for compliance
- (iv) NILGA recommends that the Committee considers steps that could be taken to provide more protection to the consumer, particularly in the instance where someone purchases a property, aware that the road outside the property has not been adopted, but perhaps is unaware of the implications of this. A protocol and protection policy would, at least, need to be actively considered in the interests of the public we collectively serve.

National House Building Council (NHBC)

The Committee for Regional Development's Inquiry into Unadopted Roads in Northern Ireland

Introduction and Background

NHBC (National House-Building Council) is the United Kingdom's leading provider of warranties for newly built and converted homes. It is a company limited by guarantee, and not having a share capital.

Since 1990, NHBC has provided a Road and Sewer Bond facility as a service to its longest established registered Builders and Developers throughout UK – typically those with a relationship of at least 15 years with NHBC.

Other than an administration charge (currently £75) there has been no charge for bonds provided they were cancelled by the due date. If bonds are not cancelled by the due date, quarterly 'over due' charges are applied at a rate described in NHBC's Road and Sewer Bond information booklet (Appendix 1).

Bonds are only available for private and social housing developments where NHBC is providing warranties on the new homes.

From 1990 to date, NHBC has provided bonds with an initial value of £212 million in Northern Ireland.

The current value of bonds provided by NHBC in Northern Ireland is £50 million.

It is clear that this facility has been greatly valued by Builders and Developers, particularly in the present environment where road and sewer bonds from commercial sources are difficult to source, and where available, are increasingly expensive.

The limit to the value of Bonds which can be provided by NHBC to any Builder or Developer is calculated by a relatively simple formula – the total number of homes registered for warranty in the last 4 calendar years x £3000. For example, if a builder registered 100 homes per annum, their Bond limit would be: $4 \times 100 \times £3000 = £1,200,000$.

Since 2006, new home starts in Northern Ireland have decreased significantly, and as a result nearly all builders' bond limits have decreased. This period has also seen the introduction of the requirement for separate bonds for NI Water and for DRD Roads Service, rather than the previous combined Road and Sewer. It is the view of the industry that the value of bonding required has increased substantially as a result.

Issues

With the downturn in house sales, developments are taking much longer to complete. As a consequence builders' cashflow has decreased significantly, and completion of developments roads is taking longer. There are numerous cases where the development roads and paths remain at base course stage. In our opinion, this is not an unacceptable position in the circumstances if they are maintained in safe condition.

Where the builder or developer no longer exists, Roads Service is in many circumstances entitled to 'call' the bond, and use the value to complete the works. That is the risk which we and other Bond providers have accepted by acting as Bondsman.

It is NHBC's experience that Bond wording specifies that reductions will be available when 'the majority of homes are occupied'. Currently it seems that NI Water are very reluctant to provide preliminary certificates unless 80% of homes are occupied.

We are aware of a number of cases where builders have found it difficult to obtain justifiable reductions in existing Bonds while simultaneously being notified of potential prosecution by Roads Service for starting their next development before Bonds are in place.

We have seen cases where Roads Service have stepped in to complete development roads, despite the builder remaining in existence and with homes to complete.

Until there is a significant increase in sales volumes, some sites will not be viable to develop purely due to Bond requirements. For example if the layout of development sewers will require a new pumping station, it is probable that all the site sewage infrastructure will need to be covered by one Bond, and it is unlikely that the Bond value could be reduced until the pumping station is complete.

There are many cases where large bonds were put in place several years ago when sales volumes were much higher, and where only a small part of the bonded area has been developed. In some cases Roads Service has agreed to split the large bonds into a number of smaller ones, meaning that reductions can be applied for where justified. This has been welcome and is much appreciated.

Conclusions and suggestions

NHBC fully supports the requirement for a mechanism to ensure that roads and sewers are completed in new housing developments should the builder / developer cease to trade.

Roads Service and NI Water should be able to justify the values being requested for Bonds. We understand that Construction Employers Federation has provided data on current typical construction costs.

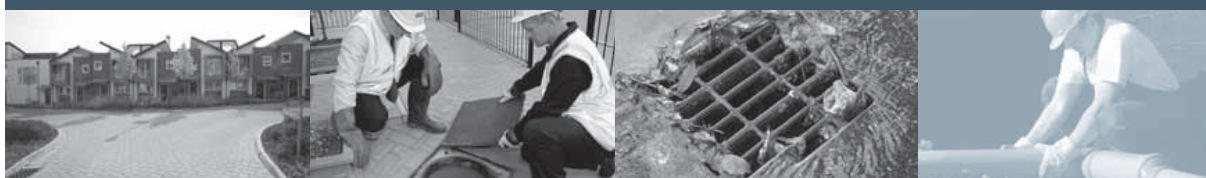
NI Water and DRD Roads Service should allocate sufficient resources to ensure that applications for reductions and cancellations of Bonds are assessed and progressed without undue delay.

Provided that development roads and paths are to a satisfactory base course standard, and the builder / developer continues to exist, it is NHBC's view that, given the current market conditions, this should be acceptable and there should be no case to call the Bonds.

We are aware that an Approved Contractor scheme for sewage infrastructure is under development in GB. This should result in a much reduced need for Bonds, while providing assurance to the relevant authorities. We would suggest that such a scheme should be investigated for Northern Ireland.

It is NHBC's opinion that the future availability of Bonds will be one of the most significant factors in determining the rate of recovery of the local housebuilding industry.

David Little
NHBC Regional Director Northern Ireland and Isle of Man
13 March 2012



Road and sewer bonds

Guidance notes and conditions
effective from 1 October 2010





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Part 1 – Introduction

NHBC offers a service to act as surety in providing bonds in favour of local authorities, water companies, urban development corporations and other public bodies in the United Kingdom and the Isle of Man in relation to commitments to construct roads, sewers and open space areas. When you are approached to provide a bond, please contact us to discuss your needs. We charge a nominal administration fee, and quarterly late redemption charges apply only if the bond is not released by the agreed release date.

Bond provision

- The bond service is discretionary. NHBC reserves the right to withhold the service in any specific case, and may change applicable terms and conditions at any time subject to reasonable notification.
- NHBC does not provide 'performance bonds' (i.e. they do not guarantee the work to be carried out by a builder or developer). A NHBC bond is a conditional undertaking to pay a sum of money with a view to assisting a Beneficiary to complete the work concerned.

Eligibility criteria

Please note the following conditions must be met before NHBC can consider a bond application:

- You must be an NHBC registered builder or developer or a Housing Association. If you are a registered builder or developer, you must have an A1 Premium Rating. If the Applicant is a Housing Association, NHBC may, at its absolute discretion, issue a bond, even if the builder or developer does not have an A1 Premium Rating and provided the builder or developer is registered with NHBC.
- The bond required must relate to residential or mixed-use developments. We are unable to provide bonds where there is no residential element.
- For multi-phased developments, each phase must be covered by a separate bond. The bond application must relate to a site on which all homes will be registered with NHBC for warranty cover under one of NHBC's Buildmark or Buildmark Choice schemes.
- The requested Value of the bond must, in NHBC's sole opinion, be reasonable in proportion to the overall cost of the work to be bonded on the site concerned.
- The Value of each individual bond applied for should not exceed £500,000.

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- NHBC will only consider providing a bond where its expected duration is five years or less.
- You will be allocated an overall bond limit for all bonds issued by us. Bonds will not be issued if that would result in the limit being exceeded. The bond limit for an A1 Premium Rated builder or developer will normally be calculated by multiplying a specified sum (currently £3,000) by the number of homes registered with NHBC for warranty purposes by the Applicant during the last four calendar years (January-December) before the date of application. Where the Applicant is part of a group registered with NHBC, the Applicant may exceed its own personal limit so long as the total usage of all the parties in the premium rating group does not exceed the total group limit (based on the number of homes registered by the group as a whole). Limits will normally be reviewed annually.

Part 2 of this document explains the procedure for applying to use this service and provides other general information. Part 3 sets out the terms and conditions on which the bond service is available. We have tried to cover the majority of situations, but if you have a specific query, please contact us to discuss further (please see page 6 for contact details).

Part 2 - How to apply for a bond

Application

To apply for a bond, you must send the following to NHBC:

1. A completed application form and the administration fee as detailed on the application form.
2. Originals of the proposed Bond Agreement, in a form ready for execution.
3. A photocopy of the Bond Agreement.
4. One copy of the site plan, coloured and marked up as referred to in the Bond Agreement to show the homes served.
5. A copy of any applicable Advance Payment Code (APC) notice under S219/220 Highways Act 1980 (where applicable in England and Wales) for APC (S220) bond applications only.
6. A copy of the Construction Consent (Scotland only).

You do not need to send a copy of the specification of work if it is separate from the Bond Agreement.

If NHBC decides to accept a bond application, it will sign and seal the Bond Agreement and send this back to you. Within one month, you must obtain the Beneficiary's execution of the Bond Agreement and send a fully executed original back to NHBC.

Note: for road construction, wherever possible you should use model forms of agreement approved by the Home Builders Federation and the Local Government Association.

Indemnities

Before any bond is issued by NHBC, all Applicants must enter into an indemnity agreement in a form specified by NHBC. The purpose of this is to enable NHBC to recover from the Applicant any sums NHBC will be required to pay if called upon by the Beneficiary. (See section 5 of the terms & conditions)

Housing Associations

If your application relates to a development for a Housing Association, you may be eligible to apply on behalf of the Housing Association for exemption from the usual indemnity obligation. You should contact NHBC as early as possible to obtain further information about this option. (See section 7 of the terms & conditions)

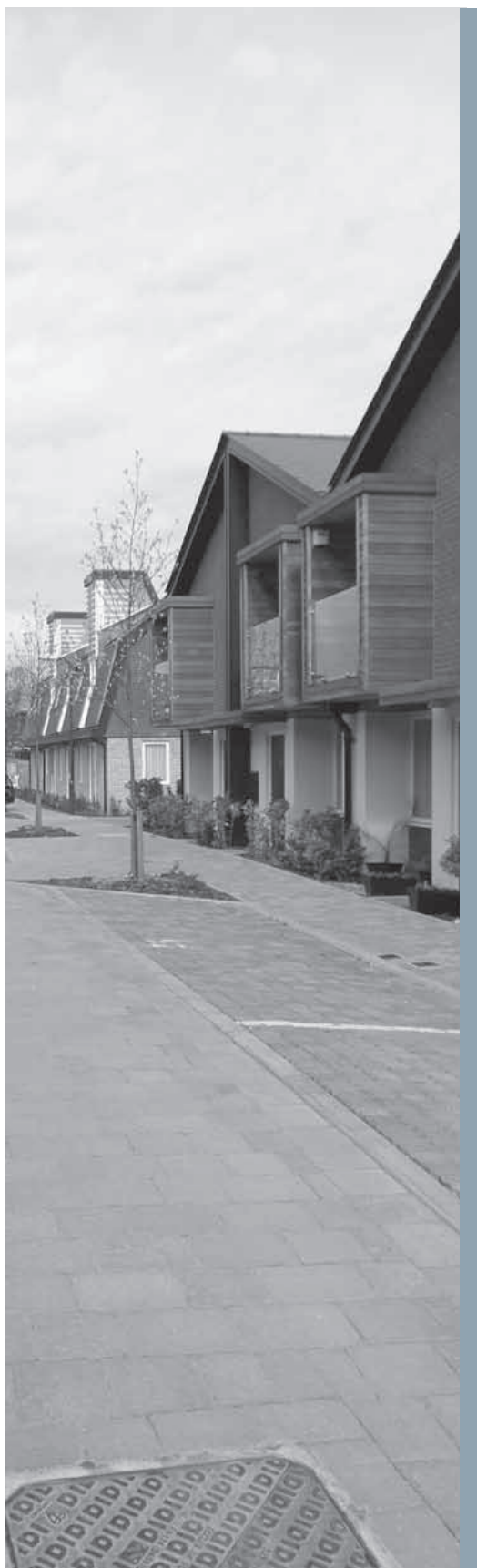
Joint applications or other unusual cases

You should contact NHBC as soon as possible if the work that is to be the subject of a bond application is to be carried out jointly by more than one builder/developer acting through a consortium, joint venture or similar arrangement, or if anything in an agreement proposed by a Beneficiary appears inconsistent with NHBC's terms and conditions. We may still be able to provide a bond, though additional conditions and charges may apply.

Completion of work

Upon completion of each phase or stage of the work, you must promptly apply to the beneficiary for a written acknowledgement of any reductions in the Value of the bond. You must forward to NHBC a copy of any such acknowledgement as soon as it is received by you.

Likewise, as soon as the work is adopted by the Beneficiary, you must promptly obtain and deliver to NHBC a full release and discharge of the bond. (see sections 3 and 4 of the terms & conditions)



Please note, we are happy to accept a scanned image of the original document providing it is issued to rsbonds@nhbc.co.uk

How to contact us

Please always quote NHBC's bond reference number on any correspondence (including any copy correspondence you forward from a local authority, water company or other beneficiary).

Applications should be sent to:

Road and Sewer Bond Team
Commercial Department
NHBC
NHBC House
Davy Avenue
Knowlhill
Milton Keynes
MK5 8FP

To contact the Road and Sewer Bond Team, please telephone **0844 633 1000** and ask for 'road and sewer bonds' or email rsbonds@nhbc.co.uk

To view this information online or to download an application form, visit our website: www.nhbc.co.uk/bonds

Part 3 - Terms and conditions

Interpretation

In these terms and conditions, unless the context otherwise requires:

“Applicant” means any builder, developer, Housing Association or other eligible person, firm or company that applies to NHBC to act as a surety (by NHBC entering into a Bond Agreement).

“Beneficiary” means a local authority, water company, urban development corporation, government department or other public or private body having the benefit of a Bond Agreement entered into by NHBC under this service.

“Bond Agreement” means an agreement under which NHBC agrees to act as a surety by undertaking, subject to the conditions set out in the Bond Agreement, to pay a sum or sums of money to the Beneficiary, or perform other obligations, in connection with certain construction and maintenance works that are to be carried out by or on behalf of the Applicant.

“Return Date” means the date on which the Bond Agreement, after being executed by NHBC, is returned to the Applicant by NHBC.

“Expected Release Date” means the date from which NHBC is entitled to receive a Release, being whichever is the earliest of the following:

- Expiry of a consecutive period of one calendar month from the Return Date and the construction and maintenance periods entered on the NHBC application form by the Applicant.
- (If different from the above) Expiry of a consecutive period of one calendar month from the Return Date and the construction and maintenance periods originally or initially specified in the Bond Agreement.
- Expiry of a period of five years from the Return Date.
- Adoption by the Beneficiary of the works that are the subject of the Bond Agreement.

“Grace Period” means a period of time following the Expected Release Date, as defined in 2e.

“NHBC” means National House-Building Council, a company limited by guarantee and registered in England and Wales, number 320784.

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“NHBC Rules” means the rules specified in the document entitled ‘Rules for builders and developers registered with NHBC’ published by NHBC, as amended from time to time in accordance with their terms.

“Release” means, in relation to a Bond Agreement, the release of NHBC from each and every one of its obligations and liabilities under the Bond Agreement, whether by performance by the Applicant of the Applicant’s obligations under the Bond Agreement, by arranging, at the Applicant’s cost, for an alternative bond or bonds to be entered into by a third party in place of the Bond Agreement and on terms acceptable to NHBC, or otherwise.

“Site”, in relation to the Bond Agreement concerned, means the particular site that is the subject of the Bond Agreement.

“Value”, in relation to the Bond Agreement concerned, means the financial limit of the indemnity or maximum amount for which NHBC could potentially be liable under the Bond Agreement(s) at any given time.

1 Effect

- a These terms and conditions apply in relation to every application to NHBC to enter into a Bond Agreement submitted to NHBC by the Applicant and to every Bond Agreement entered into by NHBC in response to such application.
- b NHBC’s acceptance of the administration fee tendered by the Applicant on application to NHBC to enter into a Bond Agreement does not create or imply any obligation upon NHBC to enter into any Bond Agreement but constitutes only an indication by NHBC that it will consider the application.
- c As between the Applicant and NHBC, when NHBC executes a Bond Agreement:
 - i that is a conditional commitment by NHBC to be bound by the terms and conditions of the Bond Agreement which terms and conditions will become unconditionally binding on NHBC only upon execution of the Bond Agreement by all other parties to it; but
 - ii the Applicant is unconditionally bound by its commitments under these terms and conditions with respect to that Bond Agreement (as if it was executed by the other parties to it).
- d NHBC may, from time to time and on reasonable notice, change the eligibility criteria and these and any other terms and conditions applicable to this service.
- e Nothing in these terms and conditions obliges NHBC to act as a surety or

to issue or enter into any Bond Agreement. NHBC reserves the right, in its absolute discretion and without giving any reason, to decline to enter into any Bond Agreement at any time.

2 Time limits

- a It is a condition of entering into any Bond Agreement by NHBC that (notwithstanding anything to the contrary in the Bond Agreement), when measured from the Return Date plus a period of one calendar month (to allow for processing time):
 - i work on the Site must be due to start under that Bond Agreement within two years
 - ii all work that is the subject of the Bond Agreement (including any post-construction maintenance work) must be due to be completed within a maximum period of five years, i.e. the expected period of NHBC's liability under the Bond Agreement must not exceed five years
 - iii the Applicant must ensure that a Bond Agreement issued for the purposes of Section 220, Highways Act 1980 (Advance Payment Code/APC Bond Agreements) is cancelled and replaced by one under Section 38 of that Act within three months (or such other period as NHBC may agree in writing).

Accordingly, if the work does not start within these two years or is not completed within these five years, or if in the case of an APC bond it is not replaced within the agreed period, the Applicant must use all reasonable efforts to have the Beneficiary of the Bond Agreement issue and deliver to NHBC a formal confirmation by the Beneficiary of the Release of the Bond Agreement, in such terms as NHBC may reasonably require, as soon as possible.

- b If any delay occurs due to the Applicant's failure to comply or to ensure compliance with any of the requirements of 2a above, NHBC may, without limiting its other rights, impose overrun charges as set out in 6b.
- c It is the Applicant's responsibility to ensure that the Beneficiary and any other parties execute and complete all such documents and do all such other things as may be necessary or expedient for the Beneficiary and any other parties to enter into any Bond Agreement executed by NHBC. Furthermore, the Applicant must use all reasonable efforts to ensure that this is completed, and a fully executed original provided to NHBC, within one calendar month after the Return Date. If this does not occur within that one-month period, NHBC reserves the right to withdraw from, or revise the terms of, the Bond Agreement.

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- d The Applicant must use all reasonable efforts to have the Beneficiary of a Bond Agreement issue and deliver to NHBC a formal confirmation by the Beneficiary of the Release of the Bond Agreement, in such terms as NHBC may reasonably require, no later than the Expected Release Date.
- e If the Applicant fails to procure delivery to NHBC of the Release referred to in 2d for any Bond Agreement, NHBC will apply a Grace Period running from the Expected Release Date. If, after expiry of the Grace Period, the Applicant has still failed to obtain delivery of this then, without limiting the Applicant's continuing obligation to procure its delivery, overrun charges will be imposed by NHBC and be payable by the Applicant as set out in 6b. The Grace Period will be calculated as follows:
 - i if the Applicant (either alone or together with its parent, subsidiary or associated companies) has had more than 1,000 homes registered with NHBC during the previous January-December calendar year before the Expected Release Date, the Grace Period will be 12 months
 - ii if the Applicant (either alone or together with its parent, subsidiary or associated companies) has had 1,000 or fewer homes registered with NHBC during the previous January-December calendar year before the Expected Release Date, the Grace Period will be six months.

3 Reduction and discharge of bonds

- a In addition to the obligations under 2d above, it is the Applicant's responsibility, not NHBC's, to obtain the Beneficiary's written acknowledgment, addressed to NHBC and in such terms as NHBC may reasonably require, of the phased reduction and eventual discharge of the Applicant's obligations under each Bond Agreement and corresponding reduction in Value, in line with progress towards completion of all relevant construction and maintenance commitments as contemplated by the Bond Agreement.
- b For the purposes of calculating any charges under 6b or any other obligations of the Applicant, NHBC will not treat as reduced or cancelled any part of the Value of a Bond Agreement unless or until the Beneficiary's written acknowledgement as aforesaid is received by NHBC.

4 Obligations regarding release and replacement of bonds

- a** In each of the following circumstances, without limiting any of its other rights, NHBC may, by written notice to the Applicant in respect of a Bond Agreement, require the Applicant as soon as possible to obtain and deliver to NHBC a formal confirmation by the Beneficiary of the Release of the Bond Agreement, in such terms as NHBC may reasonably require:

 - i** if the Applicant is in breach of any of its obligations under the NHBC Rules or under the Bond Agreement
 - ii** if the Applicant ceases at any time and for any reason to be registered with NHBC on its register of builders and developers, or its registration is suspended
 - iii** if (where the Applicant is an owner of the Site), without NHBC's prior written approval, it mortgages, charges, creates an encumbrance over or in any other way disposes of all or part of its interest in the Site to another person or organisation
 - iv** if there is a material change in control or ownership of the Applicant without NHBC's prior approval in writing.
- b** Without limiting any of its other rights, in the event of any of the circumstances indicated in 4a above, NHBC may, by written notice to the Applicant, impose additional conditions with respect to any Bond Agreement(s) entered into by NHBC at the Applicant's request, requiring the Applicant, on such terms as NHBC may reasonably require:

 - i** to cause its parent or any subsidiary or associated companies, or any directors of such companies or any of its partners, to provide undertakings in writing to NHBC to indemnify NHBC against all costs (including legal costs and disbursements) that may be incurred by NHBC in connection with a Bond Agreement in the event of NHBC becoming liable under the Bond Agreement(s); and/or
 - ii** to deposit with NHBC a sum determined by NHBC and not exceeding the maximum potential liability of NHBC under the Bond Agreement(s) at the date of the request.

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5 Indemnity

- a In consideration of the execution of a Bond Agreement by NHBC at the Applicant's request, the Applicant undertakes on demand (without deduction or set-off) to indemnify NHBC against any and all payments, costs (including legal and other professional costs and disbursements), losses, expenses, damages or other liabilities that NHBC may incur under or in connection with the Bond Agreement, whether as a result of any failure by the Applicant to comply with any construction, maintenance or other obligations under the Bond Agreement or any related agreement, or otherwise.
- b If required by NHBC, to give further or fuller effect to the above-mentioned indemnity:
 - i NHBC may require that the Applicant must enter into a separate deed or form of indemnity
 - ii where the Applicant is part of a group of companies, NHBC may require the parent or ultimate holding company to enter into a general indemnity covering Bond Agreements relating to its subsidiaries (and whether or not the parent or holding company is itself registered with NHBC as a builder or developer)
 - iii NHBC may require a personal indemnity from any director or shareholder with interests in a company requesting a Bond Agreement

in each case, in such terms as NHBC may reasonably require.

- c With respect to each Bond Agreement, the Applicant undertakes to carry out and complete (or to procure the carrying out and completion of) the work that is the subject of the Bond Agreement in a good and workmanlike manner with due diligence and, in any event, in accordance with the Bond Agreement. If the works are not so carried out and completed, NHBC may, at its option, without reference to the Applicant and at the Applicant's expense, either have the work done or reimburse the Beneficiary for the cost of the work, and in either case may recover the cost of the same from the Applicant under the indemnity in 5a above.
- d In the case of an Applicant registered under the NHBC Rules, any breach by the Applicant of any of these terms and conditions will amount to a breach also of those NHBC Rules, with consequences accordingly under those Rules.
- e Nothing in these terms and conditions limits or impairs in any way any and all other rights that NHBC may have with respect to the Applicant's obligations under NHBC Rules or any separate deed or deeds of indemnity or

counter-indemnity or any other agreement entered into at any time between NHBC and the Applicant.

- f Without limiting any of NHBC's other rights, in the event of any payment being made by NHBC to a Beneficiary under a Bond Agreement, a sum equal to that payment will forthwith, and without notice or demand to the Applicant, become due as a debt from the Applicant to NHBC; and interest will accrue and be payable on that debt as set out in the NHBC rules.
- g If a Site is owned by a person or organisation other than the Applicant (whether or not registered with NHBC), at NHBC's request the Applicant must cooperate with NHBC with a view to obtaining for NHBC an indemnity from that Site owner comparable to the indemnities under this section 5.

6 Charges

The following charges apply in connection with Bond Agreements. NHBC reserves the right to amend these charges at any time after reasonable notice:

- a An administration fee of the sum specified from time to time on the NHBC application form (subject to VAT, if applicable) is payable by the Applicant upon submission of the application form to NHBC, for each Bond Agreement applied for. This administration fee will not be refunded if the Bond Agreement is, for any reason, not entered into by NHBC or the Beneficiary or any other party.
- b For each Bond Agreement, overrun charges as follows (subject to VAT, if applicable) will be invoiced quarterly in advance and will be payable by the Applicant within 30 days of the invoice date, if a formal confirmation by



the Beneficiary of the Release of the Bond Agreement is not received by NHBC on or before expiry of the relevant Grace Period specified in 2e, or in the event of any delay under 2a, until such a Release is received or for as long as such delay continues:

- i the minimum charge per invoice is £20 per quarter
- ii subject to this minimum, the overrun charge per Bond Agreement is a percentage at the following rates during the following periods, applied to the original Value of the Bond Agreement on the Return Date (or any lesser Value expressly confirmed in writing to NHBC by the Beneficiary under 3a).

Period of charge	Percentage charged per quarter	Annualised equivalent percentage
during first year	0.125%	0.5%
during second year	0.25%	1.0%
during third year	0.375%	1.5%
during fourth year	0.625%	2.5%
during fifth year	0.875%	3.5%
during subsequent years	1.0%	4.0%

- c No refund of any charges will be made in respect of any Bond Agreement for which a formal confirmation by the Beneficiary of the Release of the Bond Agreement is received during the quarter for which a charge has been invoiced.

7 Housing Associations

- a Subject to the next sub-section, NHBC reserves the right to require any Housing Association with an interest in a Site subject to a Bond Agreement to provide an indemnity under or in accordance with section 5.
- b However, if the Applicant is a builder or developer with a NHBC Premium Rating (A1), the Applicant may apply on behalf of a Housing Association for exemption from the indemnity obligations under section 5. If, in its sole discretion, NHBC accepts such an application for exemption, a charge (subject to VAT, if applicable) will be payable by the Applicant to NHBC equal to 5p per £100 of the development contract price, subject to a minimum charge of £100.

8 Information and assistance to be given to NHBC

- a** At NHBC's request, from time to time the Applicant must provide NHBC with such information relating to the Applicant's business activities and sources of funds, and those of any parent, subsidiary or associated company in its group as NHBC may reasonably request, including copies of up to three years' statutory audited accounts and other up-to-date unaudited financial information.
- b** The Applicant must promptly notify NHBC in writing as soon as it becomes aware of the occurrence of any of the circumstances indicated in 4a.
- c** The Applicant must execute and complete all such documents and do all such other things, at the reasonable request of NHBC, as may be necessary or expedient to give full or further effect to these terms and conditions or to any Bond Agreement, or to assist NHBC with securing the repayment or reimbursement to NHBC of any sum paid or cost incurred by NHBC in connection with any Bond Agreement.

9 No third-party rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to these terms and conditions and no person other than the Applicant and NHBC shall have any rights under or with respect to the same.

National House-Building Council is a company limited by guarantee and registered in England and Wales, number 320784.

The registered office is NHBC House, Davy Avenue, Knowlhill, Milton Keynes, Bucks MK5 8FP.

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HB507 09/10

Northern Ireland Local Government Association (NILGA)

Additional Evidence: Unadopted Roads Inquiry

NILGA has recently been made aware of a procedure in place within DRD to deal with unadopted roads, and members have requested that the Regional Development Committee is furnished with details of this procedure, to further inform their inquiry.

NILGA is led to believe that:

Divisional Roads Service Offices maintain a backlog list of roads not adopted within their area, and used to call to mind all unadopted roads. Roads are added to this backlog list under 2 conditions:

(1) When a site is 80% occupied and Roads Service has not received a Preliminary Certificate of Adoption.

(2) Where a Preliminary Certificate has been received, but after 18 months a Final Certificate of Completion has not been received.

Procedure:

- Roads Service will first try to persuade the developer to undertake works.
- If this is unsuccessful, Roads Service will issue an Article 11 Notice, which gives the developer 28 days' notice to commence works.
- If the work is not commenced, Roads Service will hire a contractor to undertake the work on their behalf and claim the total amount of expenses from the Road Bond (or the administrator if the developer has went into liquidation).
- It is a very rare occasion for the Road Bond to be insufficient to cover the cost of works.

Work on unadopted roads is prioritised based on:

- the condition of the site,
- complaints from members of the public/ elected members; and
- targets set to adopt a certain amount of roads within each financial year.

NB: Roads Service can experience difficulty in proving when 80% occupancy was achieved.

NILGA trusts that the Committee will find this additional information useful. Should the Committee require any further information on this issue, please do not hesitate to contact Claire Bradley: c.bradley@nilga.org at the NILGA Offices.

Northern Ireland Water

NI Water Response to RD Committee for Inquiry into Unadopted Roads in Northern Ireland

The Regional Development Committee has provided the following definition and Terms of Reference

For the purposes of the inquiry the following definition of an unadopted road is suggested: 'An unadopted road is one where a street planning function has been exercised, a bond has been placed under the Private Streets (NI) Order 1980 and the Department is not satisfied that the street has been adequately sewered, levelled, paved, channelled, made good and lighted'.

The Terms of Reference are defined as follows:

- To identify the extent, types, distance and costs of bringing unadopted roads to a level where the Department is content to adopt.
- To define the current processes required to ensure that undeveloped roads are constructed to a standard that allows for statutory adoption by the Department.
- To identify the key stakeholders in the above processes and all statutory and other processes and responsibilities they have accountability for.
- To review the legislative processes in place within Northern Ireland to ensure that it meets with all EU and other jurisdictional and policy requirements.
- To benchmark the Northern Ireland legislative processes against those currently in place in the UK and the Republic of Ireland.

NI Water Response

The following table provides an insight into the number of applications for the future adoption of sewerage systems in new development that are received and processed by NI Water, and gives an indication of the number of Agreements which are currently in place .

Developments where NI Water entered into Agreements to adopt the sewerage system.

Developments submitted to and processed by NI Water	Pre-Assessment Stage	Agreements currently in place under Article 17 and Article 161	Preliminary Adoption Requests	Adopted
6,541	1,537	1,356	290	3,358,
100%	23%	21%	4%	52%

Legislation and Definitions used by NI Water in the Sewer Adoption Procedures

Article 19 Agreement	Agreement for Future Adoption of Sewerage System	Oct '73 – Mar '93	Water and Sewerage Services (Northern Ireland) Order 1973
Article 17 Agreement		Apr '93 – Mar '07	Water and Sewerage Services (Northern Ireland) Amendment Order 1993
Article 161 Agreement		Apr '07 – date	Water and Sewerage Services (Northern Ireland) Order 2006
Transitional Arrangements	Outstanding Article 17/19 agreements at 1st April 2007 were deemed to be Article 161 agreements and are treated as such under the Water and Sewerage Services (Commencement No 1 and Transitional Provisions) Order (Northern Ireland)2007		
Backlog Article 17 Site	NI Water adopted the recommendation of the DRD Roads Service Audit in circa. 2003, in that a site is deemed to be a backlog site, when the 'Preliminary Certificate of Completion' has been issued for a period greater than 18 months.		
Enforcement	The use of legal powers under Article 11 of the Private Streets (Northern Ireland) 1980 for former Article 17/19 Agreements, or the provision for the bond Surety and potential use of legal powers under the Water and Sewerage Services (Northern Ireland) Order 2006 for Article 161 Agreements		

Summary – Issues regarding current system

Scope of Agreement	An authorised Agreement provides for the future adoption of the sewerage system provided the sewers are constructed to a satisfactory standard. The Agreement is between NI Water and the Developer, where the sewers are not constructed to a satisfactory standard, NI Water is not obliged to adopt the sewers.
No Agreement	The terms of reference set by the RD Committee do not include developments where construction of the development sewers commenced, but the Developer did not put an Article 161 Agreement in place and hence there is no bond security to cover sewer remedial work in the event the Developer defaults from his responsibilities under the terms of the Agreement
Value of Bond	The value of the bond security must be adequate to cover the cost of outstanding sewer installation and repairs at a future date. This should reflect the potential remedial works in a final surface bitmac development roadway, and the timing of such works which may be several years ahead.
Conveyancing Solicitors Checks	NI Water does not receive a property certificate consultation from Planning Service for a first time sale within a new development. This could be beneficial in advising house purchasers where an authorised Article 161 Agreement and Bond are in place, to provide confidence for the future adoption of sewers.
Timing	When the development's sewerage system is complete and has been installed and constructed in accordance with the approved sewer layout, the onus for notifying NI Water remains with the developer. From commencement to completion depends on the sale of houses and the housing market generally. This process can take several years.

Legal Requirement for submission of an Article 161	Under the Planning Service procedures, it is mandatory for a developer to submit engineering drawings for road layout etc. and to obtain an authorised Article 32 Agreement under the Private Streets legislation. There is no mandatory requirement for the submission of a drainage layout or for the developer to sign up to an authorised Article 161 Agreement. As the drainage layout approval also provides the means for draining the surface water from the designated streets within the development, consideration should be given to making the drainage design approval a pre-condition of the Private Street approval which is a mandatory requirement
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Initial comments

With reference to the interrelated Named Day Motion presented by Miss M McIlveen MLA for Strangford constituency, and debated in the Assembly on 7th February 2012, the substance of the motion focused on developments where the streets and sewers remain unadopted and specifically focused on developments where :-

- (i) construction on developments had stopped for over a year because developers had ceased work on the development due to the downturn in the housing market,(ii)
- (iii) work had stopped on developments because developers had ceased trading and potentially the development had passed into receivership
- (v) a third area of concern related to older sites where the sewers and streets remained unadopted, some of which dated back some twenty years
- (vii) A further area raised relates to developers that went out of business before they could enter into an agreement for the future adoption of the development sewerage system with NI Water for a sewer bond. These developments have no agreements and no bond securities in place. (viii)

As the terms of reference for this review is clearly defined, those unadopted developments which do not have a bond security in place for streets and / or sewers are effectively excluded from this review. However, it should be recognised that such developments exist and when a developer has not managed to enter into an agreement with DRD Roads Service and NI Water for the streets and sewers respectively then the streets and sewers will remain in private ownership, and the responsibility of the successors, assignees and / or administrator.

Comments

1. Identify the extent, types, distance and costs of bringing unadopted roads to a level where the Department is content to adopt.

NI Water has a duty to provide water and sewerage infrastructure to service development subject to conditions, including financial conditions. This consists of on-site water mains, off-site foul and surface water sewers within an allowable reasonable cost allowance. Where the cost of provision of required water and sewerage infrastructure exceeds the allowable funding the developer is required to pay a contribution towards the total costs for providing the infrastructure.

Water Mains Installation

NI Water installs the on-site water mains within the development under a shared responsibility scheme and as the mains are initially installed by NIW they remain in the ownership of NI Water and are operated and maintained accordingly. Under the shared responsibility scheme the developer has responsibility for completing the trench backfill and final reinstatement. Water mains are generally constructed within the footpath and one issue which can prevent

the adoption of the designated streets within the development is the reinstatement or positioning of the street-works furniture associated with the water main, e.g. stop-cock boxes and fire hydrant covers and frames. It is the developer's responsibility to set these to the final surface level when he is laying the final bitmac surface of the footpath.

Foul Sewers

The installation of on-site sewers, including waste water pumping stations is the responsibility of the developer, who can enter into an Agreement with NI water for the future adoption of the development sewerage system. The sewers must be constructed to the stipulated standard set out in NI Water's Sewers for Adoption First Edition Northern Ireland manual. Prior to the Agreement being authorised, NIW check the hydraulic capacity of the proposed sewerage system; request written evidence of the statutory agency approvals and require the developer to provide a bond security for 40% of the estimated cost of the sewerage system which is the subject of the Agreement. The bond security may be either a guarantee or cash bond. Cash bonds are generally provided by the developer, while a guarantee bond security is provided by a bondsman, such as the National House Builders Confederation, a Bank or Insurance Company. The bond covers both the foul and surface water sewers.

While the adoption of foul sewers is not necessary for the serving of the development roadway, it is relevant to the adoption of the designated development roads and it is in the interest of Roads Service, NI Water and the residents to ensure that any remedial works required to the foul sewer installation that includes excavation in the development road ways, are completed before DRD Roads adopt the development roads.

Where the public sewer network is not adjacent to the development, NI Water will respond to a requisition notice from the developer and provide the off-site foul sewer under the reasonable cost allowance scheme with the developer making a contribution where necessary

Surface Water Sewers

The installation of on-site sewers is the responsibility of the developer, who can enter into an Agreement with NI water for the future adoption of the development sewerage system. The sewers must be constructed to the stipulated standard set out in NI Water's Sewers for Adoption First Edition Northern Ireland manual. Before the Agreement is authorised, NIW check the hydraulic capacity of the proposed surface water system; require evidence of the statutory agency approvals including approval to discharge to a designated water course, and require the developer to provide a bond security for 40% of the estimated cost of the sewerage system which is the subject of the Agreement. Where DARD Rivers Agency limit the volume of surface water discharging to a water course a sustainable drainage system may be required and will also be included within the evaluation and checks completed by NIW. The bond security may be either a guarantee or cash bond. Cash bonds are generally provided by the developer, while a guarantee bond security is provided by a bondsman, such as the National House Builders Confederation, a Bank or Insurance Company. The bond covers both the foul and surface water sewers.

The matter of the adoption of surface water sewers is relevant to the adoption of the designated development roads, as DRD Roads service is dependent on a suitable surface water drainage system for servicing the surface water run-off from the development road way, and the adoption of sewers are relevant to permit the adoption of the development roads.

Where the public surface water sewer network, and the approved discharge point to a water course is not adjacent to the development, NI Water will respond to a requisition notice from the developer and provide the off-site surface water sewer under the reasonable cost allowance scheme with the developer making a contribution where necessary

Value of the Bond Security

It is essential that the value of the bond security is adequate and will cover the cost of outstanding works deemed necessary to bring the development sewers up to an adoptable standard. NI Water calculates the value of the bond based on the completed final surfaces proposed within the development. Our past experience has proved that due to the time lapse between the developer putting the bond security in place for older sites, some of which can be up to 20 years old, and the decision by DRD Roads Service / NI Water to invoke enforcement measures it is possible that the bond monies available may be inadequate to cover the actual cost of the remedial works. In more recent enforcement decisions the developments involved have been constructed within the past ten years, and the available bond monies have been for the most part adequate for covering the cost of the identified outstanding works.

Developers have experienced difficulty in recent years, in obtaining bond securities due to a tightening up of the criteria applied by the bond providers. This has meant that some developers begin development construction including the installation of sewers before the Article 161 agreement and bond security is in place. In such circumstances, NI Water advise developers that they do so at their own risk and where the constructed sewers are not in accordance with the approved sewer layout the alterations to the drainage system will have to be delivered by the developer at his expense in order to meet the conditions of the approved drainage layout.

Article 161 Sewer Agreements where Enforcement Powers are being pursued under The Water and Sewerage Services (Northern Ireland) Order 2006, Article 161 Clause 6

NI Water is currently assessing the cost of bringing sewers in six developments up to an adoptable standard. In these six instances the developer is no longer trading. In a high level assessment some 2,500 metres of sewers and one waste water pumping station collectively serve these sites. The estimated cost of total sewer replacement is assessed to be £800k, however experience proves that NI Water will not be required to replace all site sewers in an enforcement situation. The total value of the available bond securities for these six sites is £238,215. In taking forward enforcement procedures each development site stands alone and identified sewer repairs / replacement are limited by the value of the bond securities provided for that individual development site.

In recent instances the actual cost of works to bring a sewerage system up to an adoptable standard varies from a few hundred pounds for minor repair works to manholes, up to full cost for total sewerage system replacement. Some examples are given :-

	Value of bond (based on 40% of total estimated cost of sewer installation)	Actual Cost of Works	Percentage of Available Bond recovered
Example 1	£14,000	£ 7,500	53%
Example 2	£33,000	£ 28,500	86%
Example 3	£32,000	£ 5,000	15%
Example 4	£45,000	£ 800	2%
Example 5	£165,000	£350,000	212%

Article 17 Sewer Agreements where Enforcement Powers are being pursued under Article 11 of the Private Streets (Northern Ireland) Order 1980 Clause 6

Prior to April 2007, the bond securities for streets and sewers were administered by Roads service on behalf of the department, and as such DRD Roads Service hold the bond security

and can provide the relevant details in respect of the available composite street / sewer bonds.

NI Water records some 1,233 developments under the Article 17 procedures in which the sewers remain unadopted. Roads Service has currently referred approximate 30 developments to NI Water for assessment under the Article 11 Private Streets (Northern Ireland) Order 1980. A high level assessment indicates that the estimated cost of replacing all sewers and associated pumping stations and works in these 30 developments, would have an estimated cost of approximately £8 million.

In consideration of the time span from the date of the Agreement and a requirement to call in the Bond measured against yearly inflationary figures and the increased cost of installing sewers makes necessary the need to review the value and adequacy of the requested bond security.

2. Define the current process required to ensure that undeveloped roads are constructed to a standard that allows for statutory adoption by the Department.3.

Sewers within new development are dealt with under Article 161 of the Water and Sewerage Services (Northern Ireland) Order 2006. This provides for developers submitting their detailed drainage proposals and entering into an agreement with NI Water for the future adoption of the sewerage system provided it is constructed to a satisfactory standard. The construction standard is stipulated in NI Water's Sewers for Adoption First Edition Northern Ireland manual.

The developer is required to provide a bond security under Article 161 (6) of the Order. This is currently set at 40% of the estimated cost of gravity sewer construction in the final surface reinstatement within the development, and the bond covers an additional 50% of the estimated costs for the construction of associated waste water pumping stations(where applicable)

When the developer has completed the sewer installation in accordance with the approved sewer layout, and achieved 51% occupancy of the dwellings within the development, he notifies NI Water of his requirement to have the sewers inspected and the release of a preliminary certificate of completion. If NIW is satisfied with the sewer construction 70% of the bond security is released and the developer commences a 12 month maintenance period where he continues to operate and maintain the sewerage system. On the satisfactory completion of the 12 month maintenance period and there being no further defects NI Water will release the remaining monies in the bond and assume full ownership and maintenance of the development sewerage system.

A joint NI Water Developers Services and DRD Roads Service Private Streets Group meets quarterly to discuss developments where there are delays in taking forward the adoption of sewers and streets. This group also discusses potential enforcement action for developments where the developer is confirmed as no longer trading.

A Memorandum of Understanding between DRD Roads Service and NI Water has been developed and agreed for matters relating to the adoption of streets and sewers in new development

3. Identify the key stakeholders in the above processes and all statutory and other processes and responsibilities they have accountability for.

NI Water responds to applications and submissions from the:-

- Developer
- Developers Agent
- Owner

The following agencies and bodies provide responses to the developer and NI Water to assist with the appraisal and authorisation procedure

- Planning Service
- DARD Rivers Agency
- DOE NIEA – Watercourse Management
- Third party land owners (where off-site sewers cross private lands)
- DRD Roads Service – Private Streets section

On completion of the development, NI Water receives requests from:

- Conveyancing Solicitors
- Planning service – Property Certificates

It is of note, that in the checks carried out by conveyancing solicitors, NI Water does not receive any property certificate consultation from Planning Service for a first time sale within a new development. The Property Certificate process does however issue consultations to NI Water for first time property resale. Some conveyancing solicitors will enquire of NI Water if an Article 161 application has been made by the developer, others ask if the Article 161 is in 'order' while some ask if the Article 161 Agreement has been authorised, while a significant number of conveyancing agents make no enquiry at all.

The relevant question to NI Water - is an Article 161 Agreement and Bond is in place to satisfaction of NI Water. A Property Certificate consultation for first time sales in new development would also be beneficial in assisting conveyancing solicitors in advising their clients appropriately.

4. Review the legislative process in place within Northern Ireland to ensure that it meets with all EU and other jurisdictional and policy requirements.

NI Water applies the provisions relating to adoption agreements as set out in the Water and Sewerage Services (Northern Ireland) Order 2006.

The consequences of not appraising, approving and authorising sewerage systems for future adoption is that;

- (i) the sewers would remain in private ownership and be the responsibility of the property owners; and
- (ii) DRD Roads Service depends on NI Water to incorporate provision for dealing with the surface water from the development streets / road ways. If NI Water took no role in the approval and adoption of on-site sewers, DRD Roads Service would (a) require the developer to design and submit a third pipe system for dealing with the surface water from the streets only. This would put the developer, the Roads Service and the property purchasers to additional expense as public surface water cannot discharge to a privately owned and maintained sewer pipe. (iv)

5. Benchmark the Northern Ireland legislative processes against those currently in place in the UK and the Republic of Ireland.

The sewer adoption process in GB is applied under Section 102 of the Water Industry Act 1991. A Section 102 Agreement is the equivalent provision to the Article 161, and the adoption procedures within UK water companies have many parallels and similar applications within the English / Welsh water companies and NI Water.

UK Water companies set the bond security at 10% of the estimated cost of installation of the development sewers. In practice where developers have defaulted on their responsibilities under the Section 102 Agreement, the water company will only recover the bond and carry

out remedial works if the estimated cost of the remedial works to the on-site sewers is less than the available monies in the bond. Where the bond monies available is less than the estimated cost of repair, the UK water companies will refuse to adopt the sewers and the on-site development sewers will remain in private ownership.

The water industry is currently reviewing how this is assessed and is making representations to have the bond calculated at 100% of the cost of sewer installation in a final surface development.

The Water research Council has a role in developing procedures which are applied by the UK water companies. WRc are in process of publishing Sewers for Adoption Seventh Edition England and Wales

NI Water is not aware of the sewer adoption procedures in the Republic of Ireland

The Committee for the Environment

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To: Paul Carlisle
Clerk to the Committee for Regional Development

From: Alex McGarel
Clerk to the Committee for the Environment

Date: 13 September 2012

Subject: Inquiry into Un-Adopted Roads in Northern Ireland

1. At its meeting on 13 September 2012 the Committee for the Environment considered the attached Departmental response to the Committee for Regional Development regarding the Inquiry into Un-Adopted Roads in Northern Ireland.
2. Members agreed to forward a copy of the letter to the Committee for Regional Development.

Alex McGarel
Clerk
Committee for the Environment

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Telephone: 028 9025 6022
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Your reference:
Our reference: CQ /202 / 12

Date: 3 July 2012

Dear Alex,

At its meeting on Wednesday 6 June 2012, the Committee for Regional Development (RD) received a presentation from the Northern Ireland Environmental Agency (NIEA) in respect of the Inquiry into Un-adopted Roads in Northern Ireland. The NIEA cited two examples (Loughadrian Brae, Poyntpass and Garrison, Co. Fermanagh) of sewerage works where the developer could not be traced and where liability for effluent seepage would be passed to residents.

The following queries have arisen from the presentation:

1. What role has Planning Service had in respect of these particular examples;
2. Are the Department and/or NIW aware of any such examples and, if so, can the Committee be furnished with the locations, the number of households affected and the expectant liability that might pass to the residents; and
3. The Water Order states that, where an offence has occurred, "...it shall be a defence to prove that he exercised all reasonable care to prevent the discharge or deposit of the matter in question". Is it a reasonable defence therefore to state that, having purchased a house, which would have included an element relevant to the building and maintenance of the pumping station, residents have exercised reasonable care?

Please see below the responses to the queries raised by the RD Committee.

1. Planning Service understand that the example highlighted at Garrison appears to refer to the Planning Appeals Commission approval (L/2004/1675 Loughside Road, Knockaraven). This proposal was approved at appeal with a condition to have a Private Streets Determination (PSD) carried out and a private Waste Water Treatment Works (WWTW) installed. The Western Area Planning office has discussed this with Department for Regional Development (DRD) Roads Service. A PSD has been carried out, however the road and sewers are unadopted. DRD has advised that they are using the developers bond to carry out work on the main road in front on the site development but will not be doing any work on the estate road. The Western Area Planning office is investigating whether details of the WWTW, required by negative condition, were provided to the Department. Planning Service Enforcement section is unaware of any enforcement action pending on this site or any other site in Garrison.

The Southern Area Planning office has advised that they are not aware of any complaint in relation to the issues raised at Loughadrian Brae, Poyntpass.

2. The Northern Ireland Environment Agency (NIEA) is aware of a number of unconsented sites where the developer cannot be traced and consented sites where the developer has gone into receivership. These sites may be served by Private Pumping Stations or Private Sewage Works. In addition there may be a number of other sites which have not yet been brought to the attention of NIEA. Known sites include:

Unconsented Private Pumping Stations (PPS)

- a) New Court, Portavogie – NIEA is unaware of the number of houses being served;
- b) Walkers Lane, Milisle - Serving 5 houses;
- c) Virgin Active Health Club, Holywood – NIEA is unaware of the size of the discharge; and
- d) Mounthill Grange the Birches. NIEA is unaware of the number of houses.

NIEA is currently investigating the above sites with a view to pragmatically resolving any issues. As part of this process all sites have been encouraged to apply for consent to discharge apart from site 2 where it appears there is no discharge to a watercourse.

Consented Private Pumping Stations (PPS) where consent holders are in receivership

- a) Lisnagole Rd Lisnaskea; the PPS was overflowing during a visit in 2010. NIEA remained in contact with owner (Thompson Developments) who initially addressed the problem. However Thompson Developments has since gone into receivership. The current ownership status of the PPS not known.
- b) Galliagh Shore Rossary Enniskillen; the Consent holder claims that another person owns the development/PPS and no longer wants anything to do with it. Enquires to contact the other party are still on-going.
- c) Cairncastle Rd, Ballygalley, Co Antrim; NIEA is currently enforcing against the owner of this site due to a breach of the consent condition.
- d) Hollowmills, Newmills, Co Tyrone; there are on-going maintenance problems with the PPS. (NIEA) is presently investigating.

Unconsented Private Sewage Works

- a) Ashton Hall housing development, Portadown; only 4 houses are currently occupied, with the remainder of the site still undeveloped.
- b) Mountain Close, Drumitee; this site consists of 8 houses and a temporary treatment plant has been installed until the remainder of the site is developed.
- c) Gort View, Coalisland; six houses are occupied on this site. There is no sewage treatment system currently in place. The contractor undertakes monthly emptying of the last manhole on site.
- d) Housing Development at Seaview Crescent, Ardglass; there are two houses currently occupied in what is potentially a 20 house development, once the development is complete. A temporary sewage infrastructure is in place; however the developer is currently in administration.

NIEA is currently investigating the above sites with a view to pragmatically resolving any issues.

Consented Private Waste Water Treatment Works in receivership

- a) Dillon Developments, Kilwaughter, Larne. System serves approximately 10 dwellings,
- b) CRM Management (Gainsborough Property Sales), Bushmills. System serves approximately 10 dwellings.

- c) Thompson Bros Developments, Blackscull Road, Dromore. System serves approximately 10 dwellings.
- d) Osborne Homes, Antrim Road, Templepatrick. System serves approximately 15 dwellings.

NIEA is currently investigating the above sites with a view to pragmatically resolving any issues.

3. Departmental Solicitors Office has previously advised that in the circumstances where effluent is seeping from a sewage works or pumping station and the developer cannot be traced, under the Water Order 1999, the person creating the discharge is held responsible. In the majority of the cases above, the persons causing the discharge are the home owners. If the home owner attempts to raise a defence or put forward evidence in mitigation, that is a matter for the court to consider.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond

DALO

[by e-mail]

The Committee for the Environment

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To: Paul Carlisle
Clerk to the Committee for Regional Development

From: Alex McGarel
Clerk to the Committee for the Environment

Date: 2 April 2012

Subject: Inquiry into Unadopted Roads in Northern Ireland

1. At a recent meeting of the Committee for the Environment a member raised a number of concerns regarding unfinished roads.
2. In relation to this, at its meeting on 29 March 2012, the Environment Committee considered a Research and Information briefing note on unadopted roads in Northern Ireland. The research was commissioned by the Committee for Regional Development as part of its Inquiry into Unadopted Roads in Northern Ireland.
3. Members were particularly interested in the potential for planning conditions to be used to prevent or reduce this problem, for example by requiring developments to take place in phases with no subsequent phase being allowed to commence until a previous phase was totally complete including roads finished and adopted, sewage infrastructure intact and street lights erected etc.
4. Being aware that the Regional Development Committee is currently considering this issue, members agreed to write asking that they are kept informed of the progress of the Inquiry into Unfinished Roads in Northern Ireland and any recommendations it may make in relation to this issue.
5. I would look forward to your response.

Alex McGarel

Clerk
Committee for the Environment

The Construction Employers Federation



3 March 2012

Inquiry into Unadopted Roads in Northern Ireland

Construction Employers Federation Submission to the Committee for Regional Development

Background

The Construction Employers Federation (CEF) is the certified representative body for the construction industry in Northern Ireland. CEF has over 1200 member companies ranging from micro businesses employing a handful of people to the largest construction employers in Northern Ireland. In total CEF member companies account for over 70% of all construction output.

The CEF represents the industry's views across a wide range of issues including procurement, planning, and infrastructure investment and in particular the house building sector.

The adoption of roads in new housing developments is a very complex process and there can be many legitimate reasons why a road remains unadopted. CEF supports best practice in the construction industry. While it may be convenient to hold developers responsible for roads remaining unadopted, before any criticism is made there must be a careful and thorough understanding of why a small number of the total road miles constructed each year in new developments do not proceed expeditiously to full adoption. CEF therefore welcomes the opportunity to respond to the Committee for Regional Development's inquiry into unadopted roads in Northern Ireland.

Road Bonds and Statutory Protection

It is necessary to make a distinction between a private road and a private street in a new housing development. This submission refers specifically to the problems that have arisen as a result of private streets in new housing developments remaining unadopted. It is not dealing with private roads.

The planning, construction and adoption of new roads in housing developments is governed by the Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (NI) Order 1992. The purpose of this legislation is to reassure new home buyers that the roads within and serving the houses in their new housing development are built to the appropriate standard, to ensure that they are adopted by DRD Roads Service and upon completion become part of the public roads network.

Under this legislation developers are required to make financial provision for the cost of the construction of the road. They enter into a formal agreement with the Roads Service for the construction and subsequent adoption of the road by Roads Service. That financial provision is secured by means of a road bond or a cash deposit.

Road bonds are legally binding agreements and are mostly provided by the National House Building Council (NHBC), or banks and insurance companies. In the event of a developer not completing the bonded road as per the agreement, proceedings can be initiated by DRD Roads Service to call in the bond and access the money that is provided by the bond. This then enables Roads Service to arrange for the completion of the road to the required standard which is then adopted into public ownership.

Bonding Facilities

It should be pointed out that each developer has a 'bonding facility' with his bank, insurance company or with the NHBC. This bonding facility works like an overdraft. The bond provider will make a charge for the provision of the bond and for the length of time that it remains in place. However, NHBC and all other bond providers are actively reducing their bond exposure in the current economic climate, thus developers bonding facilities are reducing. It is therefore in the best interests of developers to have their bonds redeemed (and thus roads adopted) as soon as possible.

During the course of construction the bond is reduced in stages to reflect progress in the construction of the road. These reductions are 50% when the base course is completed, 70% when the final top coat is completed and 90% when the road is in effect finished and is subject to 12 months maintenance. Upon a final inspection by Roads Service the bond is redeemed subject to any snagging requirements.

However, a builder's bonding facility is also limited by the bond provider in a similar way that an overdraft facility is limited. It is essential therefore that builders ensure that each bond is reduced and fully redeemed as soon as possible otherwise the bond facility will become fully utilised, thus preventing any further houses being built until the existing bonds are redeemed.

Why Would a Road Remain Unadopted?

It is important to emphasise that the vast majority of road bonds are redeemed in the normal way and there are hundreds of miles of private streets that have been constructed to the appropriate standards and have been successfully adopted into the public roads network. DRD Roads Service should be able to provide statistics to verify this.

On occasion however events do occur that cause the adoption process to be prolonged. The economic pressures of recent times have increased the number of house builders that have run into difficulties. In the current climate where house sales are slow, then a development may remain unfinished with partially built houses that are unsold. In these circumstances the developer will not be able to finish the road as there will still need to be heavy plant moving around the site until all houses have been built. The road cannot be completed until all houses are sold as the top surface would be destroyed by the movement of tracked vehicles and other heavy machinery.

There are some legacy developments (though the number is declining) where the development includes service strips within the curtilage of an individual house. These service strips are supposed to be kept unobstructed. However, in the past many of the purchasers were not aware of the existence of these service strips and planted trees or erected fences over them, thus preventing the adoption of the road until these obstructions have been removed. This has often proved difficult where the home owner is reluctant to co-operate.

Where developments have run into difficulties Roads Service will often try and work with the builder to achieve a positive outcome. It is often in the best interests of the builder, the home buyers and the Roads Service if, rather than implementing enforcement action too quickly, an agreed outcome can be negotiated, otherwise enforcement can often be subject to very lengthy legal process.

However, the legislation exists for the protection of the purchaser and therefore in cases where the construction of a private street is not progressing properly, Roads Service can intervene and issue a notice under Article 11 of the Private Streets (NI) Order 1980 which requires the execution of all works necessary to bring the street into conformity with the regulations.

If this notice is not complied with, Roads Service can proceed to carry out the works using its own contractors, recover the costs of the work from the bond and bring the road up to the adoptable standard. During this process however, under the current legislation, a developer also has the right to appeal the Department's notice and there may well be quite legitimate

reasons for lodging such an appeal. This whole process takes time to implement. There are no short cuts and care has to be taken to ensure that the full legal process has been observed.

That said however, the legislation also requires Roads Service to notify a developer at each stage of the enforcement proceedings. This can prompt the developer to carry out the necessary remedial works and that is often the end of the matter. If all parties co-operate then the current legal provisions for surety bonds for new housing are satisfactory.

Another reason for delays in finishing roads in partly occupied developments may be the result of unreasonable and excessive engineering standards that Roads Service is seeking. In some circumstances these may be considered to be over and above the required standard. This in effect will hold the developer to ransom as he is asked to incur substantial additional costs that cannot be justified. The result is a stalemate until the matter is resolved.

Sewers and Drains

The adoption of sewers and drains in new housing development is now the responsibility of Northern Ireland Water under the Water & Sewerage Services (NI) Order 2006. This order provides for developers to enter into a legal agreement with NI Water for the construction and adoption of the sewers and drains within a new housing development, provided that they are built to the appropriate standard.

In a similar way to the roads legislation, the construction of the sewers and drains is also accompanied by the provision of a financial surety to cover the cost of construction in the event of default by the builder. This financial surety is also provided in the form of a bond which is separate to the road bond.

Responsibility for the construction and maintenance of the sewers in a development remains with the developer until a final adoption certificate is issued by NI Water. Delays in the adoption of roads may also be caused by delays in the completion of sewers because a road bond cannot be redeemed until the sewers are adopted. If however the market slows down and sales remain incomplete, the redemption of the sewer bond may be delayed. Potentially this could take several years to resolve until sales pick up again.

To exacerbate this problem further, roads remaining unadopted can be a direct result of a policy applied by NI Water of only allowing adoption of the sewers and drains to proceed when the development has reached 80% occupancy. With the current tenuous state of the housing market an 80% occupancy rate could take years to achieve. We understand that this policy is to change to 51% occupancy but that could still take several years to achieve in the current economic climate and the roads can remain unadopted throughout this time through no fault of the developer.

In the event of financial failure of a developer, the enforcement process by NI Water to call in the bond to secure the cost of carrying out the remedial works to finish the sewers and drains can be a very long and drawn out process under the current legislation.

Summary:

- Any prudent developer will want to ensure that road bonds are redeemed as soon as possible as this represents a financial cost.
- The restriction on a bonding facility also restricts the number of houses that can be built, so early redemption of bonds and road adoption as soon as possible is vitally important.
- Current legislation in most cases provides adequate protection for house buyers for the completion of roads and sewers.
- In a small number of cases the road can remain unadopted and this can continue for a number of years until resolved.

-
- Market conditions will slow down the rate of building and roads will remain unfinished until a development is fully sold and therefore the roads remain unadopted.
 - Sewers and drains can also remain incomplete due to the down turn in sales which also prevents adoption.
 - Unreasonable and unjustified excessive requests for engineering standards will hold up progress to complete roads and this will result in adoption delays.
 - NI Water's policy of only allowing the sewers and drains to be adopted when the development has achieved an 80% occupancy level (soon to be 51%) means in the current housing market that roads will remain unadopted for years through no fault of the developer.
 - There may be other outside influences such as third party obstructions over service strips that prevent adoption.
 - The full legal process under the current legislation for enforcement takes time to complete.

Finally, CEF would welcome an opportunity to meet with the Regional Development Committee to expand in more detail some of these issues or to answer any questions that the Committee may have.

The Consumer Council NI

Paul Carlisle
Clerk to Committee for Regional Development
Room 254
Parliament
Ballymiscaw
Stormont
BT4 3XX

15 March 2012

Dear Paul

Please find The Consumer Council's submission in relation to the Committee for Regional Development's Inquiry into Unadopted Roads Northern Ireland

Introduction

The Consumer Council (CCNI) is an independent consumer organisation, working to bring about change to benefit Northern Ireland (NI) consumers. Our aim is to make the consumer voice heard and make it count.

We have a statutory remit to promote and safeguard the interests of consumers in NI and we have specific functions in relation to energy, water, transport and food. This includes considering consumer complaints and enquiries, carrying out research and educating and informing consumers.

Inquiry into unadopted roads in Northern Ireland

CCNI welcomes the inquiry by the Regional Development Committee (RDC). In general CCNI does not receive a large number of contacts from consumers regarding issues with unadopted roads or sewers. When contacted by consumers CCNI refer them to the most appropriate authority or organisation which, dependant on the circumstances can be a range of organisations such as Road Service, NI water, developers or legal advisors. On examining how this issue affects consumers, it is clear that often there is a lack of clear guidance or a central point of contact to enable consumers to find out how best to remedy the situation they find themselves in.

Consumers can find themselves suffering from problems which they themselves have not created and in situations that range from inconvenience to serious health risks from untreated sewage. Consumers may not be immediately affected by the unadopted status of their roads and sewers but may be faced with the problems in the future. This is because if there are issues with their sewage systems or road, NI Water and Road Service will be unable to carry out repairs if the roads remain unadopted.

The process of buying a new home can be complex even when things go according to plan; this complexity is compounded when consumers are left with roads that are unsafe or not maintained or without adequate sewage facilities. The confusion caused by having to contact a number of different agencies and organisations to establish if roads and sewers have been adopted further adds to this distress.

Consumers need a central point of contact where they can get information and advice on what is happening with the developments in which they live. MLAs and community workers have been providing vital support to consumers affected by these situations. However, not all consumers will be aware that this is an avenue they can pursue and this approach also places a strain on the resources of MLAs.

With the current bond system, developers must pay both Road Service and NI Water suitable bonds prior to commencing construction with a proportion of the bonds refunded at key

stages, as long as construction is at the required standard. Once construction has been completed and a period of maintenance by the developer has elapsed, final adoption takes place and the remainder of the bond is returned to the developer. This system should ensure that issues regarding final adoption seldom occur and may work well in the majority of developments. However, indicators of the number of properties within NI that are affected by these problems is testimony that the system and processes involved are in need of review and revision, making this inquiry all the more timely and important.

CCNI fully supports establishing the information detailed in the inquiries terms of reference. We believe the problem is twofold, in that the inquiry will need to establish what can be done to assist those householders currently affected by the issue and what can be done in order to ensure that legislation and procedures are future-proofed to ensure that these kinds of problem do not reoccur. If a change in legislation is required it will need to balance protecting consumers whilst not making the process of building new developments more complex thereby hindering future growth.

CCNI hopes that that the inquiry will be able to establish the answers and key facts posed by the enquiries terms of reference as well as specifically identifying:

- How many developments are there were developers have not consulted with Road Service/NI Water before constructing Roads and Sewage systems
- Those development companies that are still operational and those who have gone into administration and can no longer be pursued to make good the work they have done.

The Consumer Council believes that priority needs to be given to establish how many homeowners are not in receipt of adequate sewage facilities or sewer services that are below standard or unadopted, as this presents a serious risk to human health and the environment. These sites should be targeted as quickly as possible and any necessary remedial action taken to insure that they are brought up to the required standard and adopted. Priority should also be given to those consumers who live on properties where sewage system are not adopted and have no recourse to having these repaired should the system fail.

Yours Sincerely

Robert Dempster

Senior Consumer Affairs Officer
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The Consumer Council supports the Northern Ireland Fuel Poverty Coalition's petition calling on the NI Executive to comprehensively tackle fuel poverty. Please sign the petition at www.fuelpovertycoalition.org.uk Follow the Coalition on twitter for updates on their campaign.

For more information e-mail info@fuelpovertycoalition.org.uk or visit www.fuelpovertycoalition.org.uk

Law Society Northern Ireland

Introduction

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitors' profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,400 solicitors working in some 540 firms, based in over 74 geographical locations throughout Northern Ireland. Members of the Society represent private clients in legal matters. This makes the Society well placed to comment on policy and law reform proposals.

In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, the Society is keen to ensure that its voice is heard. The solicitors' profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

March 2012

1. The Society is pleased to comment on the Committee for Regional Development's Inquiry into Un-adopted Roads. The Society appreciates that the Inquiry is in its early stages. As such, the Society will provide general comments at this stage. However, we are happy to provide more detailed comments on any specific matters at a later date.
2. The issues identified currently in relation to the question of un-adopted roads relate to the situation where a bond has been placed under the Private Streets Order 1980 but the Department is not satisfied that a street has been sewered, levelled, paved, channelled, made good and lighted ready for adoption.
3. The situation is in fact more complex. There are a number of developments where the Department simply decides that they will not adopt the roadways within a development because they will become part of the "Common Areas" in a development and will be maintained within that context. There may be a reason for this such as the fact that the road is not quite wide enough to meet the Department's stipulations or there is no street lighting in place at that point. However, the other issue which arises, particularly at present, is the development is left partially finished. There has been recent publicity in relation to a number of developments where a Road Bond has not been obtained or Water Service Agreement has not been put in place, leaving properties within the development virtually unsellable.
4. The developer is usually required to obtain a Road Bond which will act as a "safety net" if he fails to complete the roadways up to the appropriate standard for adoption by the DRD. In most cases, the bond is not available at the start of the development and indeed the developer may be depending on purchase money from the first houses built to provide enough funding for the bond to be obtained. The usual procedure is that the bond is a tripartite agreement between the developer, his bank which is providing funding for the bond element and the DRD. However, a number of builders are now finding it difficult to obtain their bank's commitment to provide the bond, because of the slump in the property market.
5. Whereas previously solicitors acting for purchasers in the new development would be content to accept the developer's solicitors undertaking to provide the road bond or to make a relatively modest retention pending production of the road bond, this is not advisable in the current climate. Indeed, quite a number of financial institutions will not offer loans on properties where the road bond is not already in place. This leads to a "catch 22" where

houses cannot be sold without finance and the banks are not willing to provide the finance for road bonds to developers.

6. The Department can take action against builders to “call in” the bond if the road is not completed to appropriate standard provided of course that a bond is in place. The Society is not aware at this stage of the number of incidents where this has occurred, and it may be instructive to consider the number of incidents where in fact the roadways have not been completed.
7. In the Society’s view, it would be important to consider the views of the banks and the financial institutions both in their role as financiers of building developments but also in their role as mortgage lenders to purchasers of properties.
8. It would also be instructive to hear from the DRD as to the current level of difficulties they are experiencing and the cost to the Department (if any) of taking steps to complete roadways.
9. Finally, the Law Society is aware that the Law Commission is currently reviewing the law regarding multi-unit development and this may well be an issue on which the Law Commission would wish to comment. The Committee may also find it helpful to consider the Law Commission’s proposals in relation multi-unit developments when they are published later this year.
10. The Society remains willing to assist on any specific matter if the Committee would find this helpful.

March 2012

The Police Service of Northern Ireland

Dear Mr Carlisle

Thank you for your recent letter to the Chief Constable to which I am responding on his behalf.

We appreciate the opportunity to comment on the attached.

The PSNI welcome this inquiry into Unadopted Roads. Road Safety is at the heart of our interest in this matter and it is only by working in co-operation with the statutory body, namely Roads Service that PSNI can have any influence. It is our view that Roads Service should be working with developers and residents with a view to adopting all roads in Northern Ireland where the public have a right of access. Shortfalls in the design or maintenance of the road should not prove to be an insurmountable barrier to adoption by Roads Service.

I trust this is of some assistance.

Kind regards

Inspector Andrew S Campbell

Command Secretariat |PSNI Headquarters|65 Knock Road|Belfast|BT5 6LE

Tel 02890 561593|Ext 33593|Mobile: 07795152728

E-Mail Andrew.Campbell@psni.pnn.police.uk|Web www.psni.police.uk

The Utility Regulator



From the office of the Chief Executive

Mr Paul Carlisle
Clerk to the Committee for Regional Development
Northern Ireland Assembly
Parliament Buildings Room 254
Ballymiscaw
Belfast
BT4 3XX

Our Ref: W/07/RD Committee/SL/788

Date 15 March 2012

Dear Paul,

Re: The Committee for Regional Developments Inquiry into Unadopted Roads in Northern Ireland

Thank you for your letter dated 12th February inviting us to respond to the Committee for Regional Development Inquiry into Unadopted Roads in NI by the 16th March. This is an important matter and we trust that NI Water and other utilities we regulate will respond raising any concerns or issues they may have.

We have no response to make on this matter at this time.

Yours sincerely

Shane Lynch

Cc: Jo Aston

Northern Ireland Authority for Utility Regulation
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Northern Ireland
Assembly

Appendix 4

Memoranda and papers from the Department for Regional Development (DRD)

Departmental Briefing on Unadapted Roads in New Housing Developments



Unadopted Roads in New Housing Developments

Presentation to
The Committee for Regional Development

Dr Andrew Murray
Director of Network Services
18 January 2012



Legislation

Key legislation for New Roads in Residential Developments includes:

- The Planning (NI) Order 1991
- The Private Streets (NI) Order 1980
- The Private Streets (Construction) Regulations Northern Ireland 1994
- The Water and Sewerage Services (Northern Ireland) Order 2006

Design and Adoption



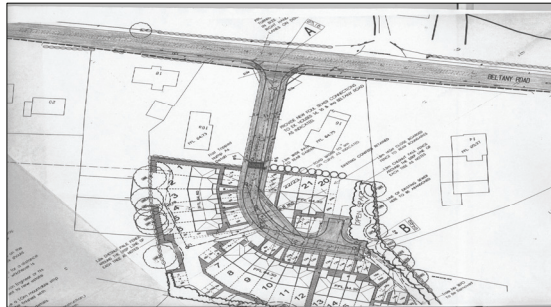
- Road access and layout for a new residential development has to comply with the current design guide, "Creating Places: Achieving Quality in Residential Developments" and other relevant Planning policy and guidance documents.
- Road adoption by the Department is governed by The Private Streets (NI) Order 1980, as amended, - The PSO.

The Determination Process

- 'Determination' is the process of agreeing the layout and relevant details of the new development roads. The process begins with the submission of a Planning Application.
- Planning Division consults Roads Service on Access and Layout of development.
- Access and Layout are agreed.
- Streets are Determined for Adoption.

The Determination Process

- This is a typical 'Determination' drawing, showing the layout of the new road that the developer has agreed to build to standard, for adoption by Roads Service.



Bonds

- The Private Streets Order requires a developer to enter into a formal agreement for the construction and subsequent adoption of the Private Streets, prior to carrying out work for the purpose of erecting a building.
- The Developer is required to secure the agreement by means of a guarantee bond. It is illegal to begin building work without this in place.
- Where Roads Service becomes aware of work starting without an Agreement and Bond, we take this up with the developer, and can ultimately prosecute.

Construction and Adoption

- In normal circumstances, construction of the new streets proceeds at an appropriate pace as the development progresses.
- Roads Service carries out inspections at key stages, to ensure that the new street is up to standard.
- When the street has been completed as agreed, the developer offers it for adoption, and following a one-year maintenance period, it becomes a public road maintained by Roads Service.
- For a street to be adopted, at least one half of the buildings should be complete and it should be joined or likely to become joined to the public road network.

Typical Problems

- Developers proceeding without Agreement or Bond.
- Roads not completed in compliance with the Determination.
- Issues with sewers and drains.
- Road construction not keeping pace with development.
- Developer ceases work on site, or goes into liquidation.

Enforcement / Remedies

- Where the construction of a Private Street is not progressing satisfactorily, Roads Service may issue "a notice under Article 11 of The PSO requiring the execution of all works which are reasonably necessary to bring the street into conformity with regulations". (*Typically within one year from the date on which the buildings are first occupied, or such longer period as the Department thinks reasonable*).
- Where the requirements of an "Article 11" notice are not complied with, Roads Service may proceed to carry out the works and recover the costs of the works and expenses from the bond.
- The Private Streets function, from Application through Determination to Adoption, is conducted within a prescribed statutory arrangement that includes opportunity for a developer to appeal the Department's notices.
- Roads Service must always notify a developer at each stage of enforcement proceedings, and this often prompts the developer to carry out the necessary remedial works.

Department for Regional Development



Paul Carlisle
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Telephone: (028 905) 41140
Facsimile: (028 905) 40064
Email: alan.doherty@drdni.gov.uk

Your reference: DALO 2/3/2012
Our reference:

2 February 2012

Dear Paul

UNADOPTED ROADS

Thank you for your letter of 19 January 2012 requesting information on a number of queries relating to unadopted roads.

I have addressed the Committee's queries in the order in which they were raised:

1. *Can the Department advise the total number of unadopted roads in Northern Ireland at 31 December 2011 either by constituency, council area or regionally?*

The Department for Regional Development's Roads Service has advised that it is not responsible for unadopted roads in Northern Ireland and, accordingly, does not keep a record of the number of such roads. Roads Service does, however, maintain records relating to determined roads in new developments. A list of these roads is attached at Annex A.

2. *Can the Department provide details in respect of the 44 roads within the process of adoption and detail the total length, expected cost and precise stage of each?*



Details on the 44 roads in question are provided at Annex B.

3. *Can the Department indicate the total number of bonds it is pursuing, how many it has successfully negotiated and the total cost of those negotiated and yet to be negotiated?*

Due to the ongoing nature and different stages of the negotiations over such bonds, it is not possible to state how many have been successfully negotiated, or to separate the costs of those negotiated from those that have yet to be negotiated. However, I am advised that the Department is currently pursuing bonds with a value in excess of £4.7m in the current financial year.

4. *How many Article 11 prosecutions have the Department pursued, how many successfully pursued and what was the cost of these two categories in the last three financial years?*

In the last three financial years, the Department has served 227 Article 11 notices of which, 71 have progressed to enforcement stage. While the total value of the bonds involved in these cases amounted to over £8.7m, the final value of the cases that proceeded to enforcement will not be known until all works are completed.

5. *Why does the Department negotiate with the liquidator rather than pursue the bond with the third-party holding the bond?*

I have been advised that the Private Streets function, from application through determination to adoption, is conducted within a prescribed statutory arrangement that includes the opportunity for a developer to appeal the Department's notices. Roads Service must always notify a developer at each stage of enforcement proceedings, and this often prompts the developer to arrange for the necessary remedial works to be completed.

Roads Service must afford the developer/administrator/liquidator the opportunity to complete the necessary street work, before calling on the bond. In many cases, the

02/02/2012 11:45:00

developer/administrator/liquidator will work with Roads Service and arrange for work to be completed in order to get the site adopted so that houses can be sold.

I trust you will find this information satisfactory.

This letter is disclosable under FOI.

Yours sincerely,



ALAN DOHERTY
Assembly Liaison Officer

02/02/2012 11:45:00

Annex A

Roads determined for adoption, but not yet adopted, by council area

Roads Service Division	Council Area	No of Determined Roads not Adopted (Note – may include roads that have not yet been developed)
Northern	Coleraine	173
	Limavady	78
	Moyle	65
	Antrim	28
	Ballymena	40
	Larne	23
	Ballymoney	20
	Londonderry	59
	Eastern	Belfast
Lisburn		311
North Down		137
Carrickfergus		89
Newtownabbey		234
Castlereagh		110
Southern	Ards	92
	Armagh	62
	Down	91
	Banbridge	53
	Newry & Mourne	114
	Craigavon	144
Western	Omagh	143
	Strabane	120
	Fermanagh	193
	Dungannon	200
	Cookstown	107
	Magherafelt	99
All	Total	3148

Annex B

Sites where Article 11 enforcement has taken place or is underway in 2011/12

Location	Length (metres)	Bond Value	Progress	Completion Date (expected)
Castleroe Road, Coleraine Stage 2	154m	£18,825	Completed at a cost of £8, 756.96	28 November 2011
Knockbracken Way, Coleraine Stage 1	101m	£46,600	Ongoing	April/May 2012
Knockbracken Drive, Coleraine Stage 4	163m	£5,850	Ongoing	April/May 2012
Knockbracken Drive, Coleraine Stage 5	165m	£17,640	Ongoing	April/May 2012
Knockbracken Drive, Coleraine Stage 6	154m	£16,200	Ongoing	April/May 2012
Drumsurn Court, Limavady Stage 1	241m	£30,600	Ongoing	June/July 2012
Millmount Randalstown (3 bonds)	226m	£71,100	Pump Station design ongoing	December 2012 (Estimate)
Bush Manor, Antrim (4 bonds)	716m	£333,201	TAS for retaining wall ongoing	December 2012 (Estimate)
Bush Manor Antrim (5 bonds)	470m	£155,800	TAS for retaining wall ongoing	December 2012 (Estimate)
Galdanagh Drive, Clough (2 bonds)	118m	£41,800	Complete	Adopted 6 September 2011
Grange View, Toomebridge (1 bond)	164m	£16,290	Developer intends to do work	Unknown
Castleview Cottages, Glenarm (1 bond)	Footway – 282m	£26,100	Virtually complete	September 2012 (Estimate)
Lindara, Larne (10 bonds)	2167m	£795,260	St Lighting complete, all other work still to start	Mid 2013 (Estimate)
Bannfields, Ballymoney (5 bonds)	350m	£13,415	Roads Service contractor due to start	April 2012 (Estimate)
Mill Cottages, Stranocum (1 bond)	405m	£20,880	NIW to assess CCTV for adoption of sewers	May 2012 (Estimate)
Shelton Meadow, Loughguile (1 bond)	43m	Nil*	Developer to complete	March 2012 (Estimate)
Shelton Meadow, Loughguile (1 bond)	215m	£31,950	Developer to complete	June 2012 (Estimate)
Knockeden, Ballymoney (2 bonds)	223m	£61,800	Roads Service contractor to start	September 2012 (Estimate)
Jubilee Court, Ballymoney (1 bond)	142m	£69,100	TAS for retaining wall ongoing	December 2012
Carrowdoon Park, Dunloy (3 bonds)	256m	£46,650	Roads Service contractor started on site	May 2012 (Estimate)
Millbrooke Manor, Ballymoney (2 bonds)	641m	£56,280	Roads Service contractor due to start	May 2012 (Estimate)
Mill Square Ballybogey (1 bond)	221m	£855	Complete	Adopted 25 May 2011
Moorfields Ballybogey (1 bond)	198m	£90,100	Complete	Adopted 19 December 2011
Nursery Ave, Ballymoney (1 bond)	185m	£69,750	Complete	Adopted 11 April 2011
Dunhugh Manor, Londonderry. LD999		£33,500	RS contractor completing works	Unknown
Bealachmor Upper, Londonderry LD933	180m	£16,110	Developer completed works	Adopted 04 May 2011
Shepherds Glen, Londonderry LD789,791	149m	£9,525	Developer completed works	Adopted 27 September 2011
Blackthorn Manor	287m	£99,100	Developer completed	Adopted 28 September

Annex B

Sites where Article 11 enforcement has taken place or is underway in 2011/12

Londonderry LD1035			works	2011
Brookview Glen Londonderry LD903,919,957	670m	£21,840	RS contractor completed works	Adopted 14 December 2011
Carn Manor Londonderry LD997,1019,1036	658m	£20,100	Developer completing works	Unknown
Grangemore Park, Londonderry LD946,947,1000	1063m	£314,600	Developer completing works	Unknown
Willowbrook Park, Bangor	141m	£85,591	Complete	Adopted October 2011
Gibsons Green, Bangor	7m	£57,000	Complete	Adopted October 2011
Kestral Park, Bangor	6m	£50,311	Complete	Adopted September 2011
Balmoral Square, Bangor	135m	£156,323	Complete	Adopted October 2011
Gobrana Lodge Glenavy	90m	£44,200	Complete	Adopted July 2011
Seaview Court, Portaferry	180 m	£41,700	Work Progressing	July 2012
Tyrella View, Ballykinlar	115 m	£54,500	Near completion	April 2012
The Demesne, Downpatrick	2552 m	£447,480	Work Progressing	August 2012
Grange Meadows, Kilkeel	825 m	£121,175	Work Progressing	June 2012
Brookvale, Armagh	127m	£14,166.	Complete	Completed April 2011
Riverview Court Banbridge	245m	£33,125	Complete	Completed November 2011
Oakfields, Craigavon	355m	£74,000	Complete	Completed June 2011
Broomhill, Craigavon	195m	£29,475	Complete	Completed June 2011

*Exempt under Article 24 of the Private Streets (Northern Ireland) Order 1980

Department for Regional Development

Press Release

Kennedy open to improving unadopted roads process

Regional Development Minister Danny Kennedy is open to improving the process for adopting roads in new housing developments.

~ Tuesday, 7 February 2012

In the Assembly today the Minister welcomed the opportunity to debate the issue of surety bonds, which are legally binding agreements that guarantees funding for the provision of completed roads and sewers for new housing developments.

Speaking in the Assembly the Minister said: "I recognise the concerns of local home owners who find themselves in new housing developments, where developers have left roads and sewerage systems unfinished.

"Roads Service and NI Water are making use of the current legislation and procedures to address these problems but this process takes time to complete.

"The current legislation requires developers to enter into a surety bond, which is a formal agreement for the construction and subsequent adoption of roads and sewers in new housing developments. In cases where the construction is not progressing satisfactorily, Roads Service can issue an Article 11, requiring works to be completed. In the last three financial years, Roads Service has served 227 Article 11 notices, 71 of these have led to enforcement action."

Commenting on the Regional Development Committee's inquiry into unadopted Roads in Northern Ireland, Danny Kennedy said: "I recognise the role of other relevant Departments and local Councils, including NILGA in this inquiry and the need to compare the process in Northern Ireland with other regions in the UK and the Republic of Ireland."

In conclusion the Minister said: "I will ensure Roads Service and NI Water officials are available to the Committee throughout their inquiry process.

"I can assure members that Roads Service and NI Water will continue to enforce legislation to offer as much help as possible to new home owners who find themselves in this situation."

Notes to editors:

1. All media queries to Department for Regional Development Press Office Tel 028 9054 0817. Out of office hours please contact the Duty Press Office via pager number 07699 715440 and your call will be returned.
2. Legislation that governs the planning and eventual adoption of new roads in housing developments is - the Private Streets (Northern Ireland) Order 1980 and the Private Streets (Amendment) (NI) Order 1992.
3. The adoption of sewers in new housing developments - these are processed by Northern Ireland Water (NI Water) under Articles 161 to 163 of the Water & Sewerage Services (Northern Ireland) Order 2006.

Department for Regional Development



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Your reference: DALO – 3c/4/2012
Our reference: 2108

25 May 2012

Dear Paul

COMMITTEE FOR REGIONAL DEVELOPMENT - UNADOPTED ROADS

Thank you for your letter of 9 May 2012 requesting a reply to a number of questions related to unadopted roads in housing developments.

Roads Service has examined the NAMA list of 'Properties Subject to Enforcement Action'. There are 153 listings for Northern Ireland. Of these, 134 of the properties are listed as residential (most are single units), commercial or industrial properties, agricultural land, or developments that have not commenced.

The remaining 19 properties relate to developments which have commenced, and which may have roads that have been determined for adoption associated with the development. These 19 developments have been cross-referenced with Roads Service records where possible and updated in Annex A, attached.

Please be advised that there is no set timeframe between notification of insolvency and redemption of the bond to complete street works. A developer's insolvency does not automatically mean that the bond will be required; in some cases, the appointed administrator may decide that it is better to complete the necessary works and avoid the need for the bond to be used. Such options need to be examined before the bond

is called upon

A circular logo with the text "INVESTORS IN PEOPLE" around the perimeter and a stylized figure in the center.

In cases where the bond is required to get the streets completed, the timescale depends on the stage a particular development is at. However, the timescale could be in the order of 12 to 18 months.

I should also explain that the Department is not always immediately aware of when companies cease to trade. We cannot, therefore, give a value of unredeemed bonds which currently exist as a result of companies ceasing to trade.

Since January 2011, 122 Article 11 notices have been issued. These notices are initially served to require the developer to carry out certain works, and if the developer complies, no further enforcement action is required. However, when the developer does not respond to the Article 11 notice, further enforcement action may ultimately result in the Department completing the necessary work and calling on the bond monies.

As with your query regarding the timeframe between notification of insolvency and the redemption of a bond to complete works, the timescale relating to Article 11 notices depends on particular circumstances, but would typically be in the order of 18 months.

Roads Service recently carried out a review of its Private Streets legislation, and the only issues identified were technical in nature, primarily that construction standards should be updated to account for new materials and methods. Such changes do not have a bearing on the matter in question.

While Roads Service is broadly content with the current Private Streets legislation, if all parties comply with their legal and procedural responsibilities, we acknowledge that it would be possible to give added protection to homebuyers by other measures such as:

- prohibiting house sales / occupancy until development roads are completed;
- increased financial penalties for non-compliance with bond requirements/enforcement notices; and
- powers to stop building works if bonds are not in place at the appropriate time.

However, the Department acknowledges the practical and financial implications of such measures on developers and homebuyers would need to be very carefully considered, especially in the current economic circumstances.

The Department becomes aware of a developer going into administration or liquidation through a variety of channels:

- Stubbs Gazette;
- correspondence or calls from the Administrator, liquidator, solicitors, elected representatives, residents;
- direct dealings with developers;
- media articles; and
- word of mouth/grapevine.

The percentage figure of 3% you quote with regard to 'determined' roads that have or will result in unadopted roads was intended to give an idea of the proportion of determined roads where Roads Service ultimately has to enforce the bonds to get the roads completed. Many development roads which are currently unadopted are progressing through the normal procedures in pace with the development, and will be completed without recourse to enforcement action.

It would require a major exercise, including site visits, for Roads Service to establish the number of houses which are currently sited on unadopted roads in housing developments. In our cross-referencing of the NAMA list at Annex A, house numbers, where quoted, relate to the number of houses on the plan, but not all of these will have been built at this stage.

This letter is fully disclosable under FOI legislation.

Yours sincerely



Alan Doherty

Departmental Assembly Liaison Officer

Annex A

List of Enforcement Properties in Northern Ireland – Possible Private Streets/Bonds Status

Address 1	Address 2	Address 3	Country	Asset Description	Sales Agent Firm Name	Sales Agent Contact Phone Number	Sales Agent Contact Email Address	Receiver's Firm	Receiver's Firm Contact Email Address
1	Ramoon Road Ballycastle	Antrim	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	Keenan Corporate Finance	properties@keenanf.com
Ramoan Road Ballycastle; (Ref E/06/0142); Determined Lengths 753m; site access formed but no house building started, so bond is not yet required.									
2	Belize Meadows Lisburn	Antrim	Northern Ireland	Development - Commenced	Osborne King	0044 (0) 2890 270 000	gavin.clarke@osborneking.com	BDO Northern Ireland	nama.properties@bdo.co.uk
Belize Meadows, Lisburn; length of road involved - 330 Lin m; Bond value - £152,550 (residual bond £76,275 (50%)). Bond provider - NHBC. No. of houses - 35 No.									
3	Tullyview Loughguile	Antrim	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	Keenan Corporate Finance	properties@keenanf.com
Tullyview, Loughguile; Determined length 280 m; Bond by AIB Group (UK) plc (A First Trust Bank; Bond remaining £29310; 29 houses (of which 20 are built)									
4	Causeway Street Portrush	Antrim	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	RSM McClure Waters	properties@rsmcw.com
Causeway Street, Portrush (C/2005/0964); Determined Lengths 0; not a private streets site, i.e. no roads determined for adoption.									
5	Strangford Road Ardglass	Down	Northern Ireland	Development - Commenced	Osborne King	0044 (0) 2890 270 000	gavin.clarke@osborneking.com	BDO Northern Ireland	nama.properties@bdo.co.uk
Strangford Road, Ardglass; No Bond in Place at present; Required Bond Value would be approx £59,100; Length of Road is 156 metres of carriageway, 90 metres of footways; 14 Houses.									
6	Certain Units at Limestone Square Rock Road	Armagh	Northern Ireland	Residential	Multiple	CPS Armagh	0044 (0) 28 37528888	helen@cps-property.com	RSM McClure Waters
Limestone Square: Bond in place; Bond value for stage 1 is £41,250; Bond Provider is Anglo Irish Corporation Ltd; Length of Road determined is 230 metres; 8 houses.									
7	Raglan Road Bangor	Down	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	Keenan Corporate Finance	properties@keenanf.com
Raglan Road, Bangor; is not a private streets site, i.e. no roads determined for adoption.									
8	Certain units at Cranfield Grange Kircubbin	Down	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	Keenan Corporate Finance	properties@keenanf.com
Cranfield Grange, Kircubbin. Bond in Place; Bond Value is £36,000 (& £45,000 for associated works on the existing public road under Article 3(4)(C) agreement); Bond Provider NHBC; Length of Road is 120 metres shared surface carriageway & 150 metres widening under 3(4)(c) agreement; 22 Houses.									
9	Beech Meadows Waringstown	Down	Northern Ireland	Development - Commenced	Osborne King	0044 (0) 2890 270 000	gavin.clarke@osborneking.com	BDO Northern Ireland	nama.properties@bdo.co.uk
Beech Hill/Brae Manor, Waringstown; Bond in place; Bond Values - Stage2 £115,525, Stage3 £49,625, Stage4 £25,200, Stage5 £10,500; Bond Provider is NHBC; Length of Road - Stage 2, 50 metres, Stage 3, 300 metres, Stage 4, 72 metres, Stage 5, 65 metres; 6houses. Private - not determined									
10	Lockwood Court Ballinamallard	Fermanagh	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	Keenan Corporate Finance	properties@keenanf.com
PS Ref f Nr 815/05 – 90% reduction in place against NIW. No reduction in place against RS bond. Remaining Bond £52,052 (Surety by NHBC)									

Annex A

NAMA List of Enforcement Properties in Northern Ireland – Possible Private Streets/Bonds Status

11	Certain units at Oakhill Avenue	Ermiskillen	Fermanagh	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	Keenan Corporate Finance	properties@keenanf.com
PS Ref 819/07 – 50% reduction in place for 3(4)c. Full bond in place against Article 32. Remaining Bond £97,600 (Surety by NHBC)										
12	Certain units at Carr Hill	Investown	Fermanagh	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	Keenan Corporate Finance	properties@keenanf.com
PS Ref 802/02. Stage 1 & 2 adopted. No bond in place for Stage 3 – work believed to have commenced										
13	Certain lands at The Meadows	Investown	Fermanagh	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	Keenan Corporate Finance	properties@keenanf.com
Private – not determined										
14	Certain units at Waters Edge	Leggs	Fermanagh	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	Keenan Corporate Finance	properties@keenanf.com
15	Beechfield Mews	Moir Road	Lisburn	Northern Ireland	Development - Commenced	Fred Dalzell and Partners	0044 (0) 28 92666638	info@fredalzellandpartners.com	RSM McClure Watters	properties@rsmmw.com
Beechfield Mews, Lisburn is not a private street site, i.e. no roads determined for adoption.										
16	Killyman Road	Dungannon	Tyrone	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	Keenan Corporate Finance	properties@keenanf.com
Insufficient information.										
17	Tamamore Road	Dungannon	Tyrone	Northern Ireland	Development - Commenced	Not For Sale at Present	N/A	N/A	Keenan Corporate Finance	properties@keenanf.com
18	Certain Units at Cambic Court	Hillborough Rd	Down	Northern Ireland	Residential - Multiple	Fred Dalzell and Partners	0044 (0) 28 92666638	info@fredalzellandpartners.com	RSM McClure Watters	properties@rsmmw.com
Cambic Court; Bond in place; Bond Value for Stage 1 is £15,900 and Stage 2 is £129,700; Bond Provider is Anglo Irish Bank Corporation PLC; Length of Road is 232 metres; Number of houses is 21										
19	Certain Units at The Old Mill	Tulliniskey Road	Waringford	Northern Ireland	Residential - Multiple	Ulster Property Sales	0044 (0) 2890 661 929	dturley@ulsterpropertysales.co.uk	RSM McClure Watters	properties@rsmmw.com
Tulliniskey Road; Bond in place; Bond Value - Stage 1, £156,000 and Stage 2, £44,000; Bond Provider is Anglo Irish Bank Corporation Ltd; Length of Road is - Stage 1, 106metres and Stage 2, 140 metres; 16 houses.										

Note: Roads Service comments for each listed enforcement property are subject to verification of the address and asset descriptions given in the NAMA list.

Department for Regional Development



Department for
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Your reference: DALO 8/4/2012
Our reference: DALO 8d/4/2012

22 June 2012

Dear Paul

DALO 8d/4/2012 - UNADOPTED SEWERAGE INFRASTRUCTURE

Following a presentation from NIEA officials in respect of the Committee's inquiry into unadopted roads, the Committee wrote to DRD raising several questions in relation to unadopted sewerage infrastructure. The Committee advised of two locations (Loughadrian Brae, Poyntpass and Garrison, Co Fermanagh) where private sewerage infrastructure is not meeting NIEA environmental standards and the developer cannot be traced.

Responses have been provided below to two of the questions raised by the Committee which relate to NI Water and DRD.

- **What actions can the Department and/or Northern Ireland Water (NIW) take to ensure that the substantial financial burden resultant from these failures does not pass to residents?**

NI Water can adopt sewerage systems where an agreement has been put in place (under Article 161 of the Water and Sewerage Services NI Order) for future adoption, and the system meets the requisite construction and performance standards for adoption. NI Water has adopted sewerage systems in more than 300 developments within the past three years.



NI Water can apply enforcement procedures where a waste water treatment works forms part of an Article 161 agreement for the future adoption of a sewerage system, but only where a bond security provision has been made by the developer. Where the developer is no longer trading and where the bond security is inadequate, or does not exist, the cost of any work necessary to bring the treatment works up to adoptable standards rests with the developer, and his assignees or successors.

In some instances where the public sewer infrastructure does not have adequate capacity, a developer may have constructed a temporary private treatment works to service his development in the interim period. NI Water has no responsibility to adopt or approve such arrangements unless the developer has entered into an Article 161 agreement with NI Water. The temporary private waste water treatment works remains the responsibility of the developer, and his successors or assignees until the public sewerage system has been upgraded, and the developer approaches NI Water for a permanent connection to be made to the public sewerage system.

In some cases a developer may construct a private treatment works to serve a development without entering into an Article 161 agreement with NI Water for the future adoption. Private waste water treatment works may be offered for adoption by NI Water at a future date provided the standard of construction and performance of the waste water treatment works meets the NI Water specification. NI Water will be happy to advise the developer, their successors or assignees on the work required to bring the treatment works up to an adoptable standard.

- **Are the Department and/or NIW aware of any other such examples and, if so, can the Committee be furnished with the locations, the number of households affect and the expectant liability that might pass to the residents?**

NI Water does not hold general records of privately constructed or temporary waste water treatment works.

NI Water has knowledge of private treatment works which are part of an Article 161 agreement and will be offered for adoption as an integral part of a sewerage system. NI Water has adopted two such private treatment works in recent years at Ardmillan and Tullynakill. Work is also in hand with a developer for adoption of a private waste water treatment Works at Ballygalget.

NI Water is aware of private waste water treatment works at Killea, Co Londonderry and Garrison Co Fermanagh. Neither of these works meets the standard and criteria for adoption by NI Water.

The site mentioned at Loughadian Brae, Pointzpass is a private waste water pumping station which has not been offered to NI Water for adoption. In this case responsibility for the pumping station remains with the developer's successors or assignees. NI Water would be happy to provide advice to those with responsibility for the site on the steps required to bring the site up to an adoptable standard.

This letter is disclosable under FOI.

Yours sincerely



Alan Doherty
Departmental Assembly Liaison Officer

Ministerial Comments on Inquiry



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Your Ref:

Our Ref: DRD/COR/919/2012

Date: 30 October 2012

Thank you for your letter of 21 September 2012 seeking my initial comments on the Committee's draft report on its inquiry into unadopted roads and sewers.

I am grateful for the opportunity to view the report of the Committee's Inquiry into this important issue. I sympathise with homeowners who are left with unfinished or inadequate private roads and sewerage systems. I note the 10 recommendations made by the Committee and, in principle, support the policy direction that the Committee has taken. I would summarise this as a desire to see all private roads and sewers adopted as far as reasonable. Nonetheless, this is a complex area with potentially significant resource implications (as the Committee notes), and I will need more time to consider the recommendations in detail. My initial comments on the recommendations are as follows.

Paragraphs 16 & 17: I agree that the level of bonds must be set at acceptable levels to facilitate the completion of remedial works, if necessary. I also support proposals for making procedures relating to calling in bonds as effective as possible. Of course, the best solution is to facilitate the developer's completion of the construction of the sewers and roads to an adoptable standard.

Paragraph 18: My Department's Roads Service has reviewed the Private Streets Order in recent years, and considers that the legislation is generally adequate. However, I am willing to consider whether any procedures followed under the current legislation need further review, to enable my Department to deal most effectively with occurrences of unadopted roads.

Paragraph 19: I am content to review existing water and sewerage policy and legislation to see if there are any changes that can be made to reduce the instances of unadopted



CLARCOREPODRD 12 002177
OCT/KP

sewers. Given its complexity, this will take some time, as the Committee has acknowledged.

Paragraph 20: I support the need to complete an audit to determine the number of unadopted sewers and roads and the costs to bring these up to an adoptable standard. My Department's Roads Service and NIW will cooperate with this Audit as required.

Paragraphs 21 & 22: I welcome the recommendation for improved information resources for home buyers, and the inclusion of any legal opinion on property certificates that helps clarify the position on the adoption status of roads and sewers for potential home buyers.

Paragraph 23: While my Department has processes in place to trigger bond enforcement and to guide through the various stages to completion, I am content to have these processes reviewed to ensure that they are appropriate for the current circumstances.

Paragraphs 24 & 25: On the proposal for a Cooperation Forum, I am prepared to look at ways to take this work forward and agree that the groups identified should be consulted/involved. However, I would want to be clearer on the scope of the work before making any commitments

I trust that this is useful to you and to the Committee.



Danny Kennedy, MLA
Minister for Regional Development

CLARCOREPODRD 12 002177
OCT/KP





Northern Ireland
Assembly

Appendix 5

Papers from Others

Committee for the Environment

**Committee for the Environment
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**To: Paul Carlisle
Clerk to the Committee for Regional Development**

**From: Alex McGarel
Clerk to the Committee for the Environment**

Date: 8 May 2012

Subject: Unfinished Roads

1. At its meeting on 3 May 2012 the Committee for the Environment considered the attached Departmental responses to Committee queries in connection with unfinished roads.
2. The Committee agreed to forward a copy of these responses to the Committee for Regional Development for consideration as part of its Inquiry into Unadopted Roads in Northern Ireland.
3. The Committee is particularly interested in the potential for planning conditions to be used to prevent or reduce this problem, for example by requiring developments to take place in phases with no subsequent phase being allowed to commence until a previous phase was totally complete including roads finished and adopted.
4. The Committee would like to know if the Terms of Reference for the Inquiry into Unadopted Roads in Northern Ireland will be addressing the issues raised in connection with phased completion.
5. I look forward to your response.

**Alex McGarel
Clerk**

Committee for the Environment

Committee for the Environment

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To: Paul Carlisle}
Clerk to the Committee for Regional Development

From: Alex McGarel
Clerk to the Committee for the Environment

Date: 8 June 2012

Unfinished Roads

1. At its meeting on 7 June 2012 the Committee for the Environment considered the attached Departmental response to Committee for Regional Development queries in connection with unfinished roads.
2. The Committee agreed to forward a copy of this response to the Committee for Regional Development for consideration as part of its Inquiry into Unadopted Roads in Northern Ireland.

Alex McGarel
Clerk
Committee for the Environment

Department of the Environment

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Email: privateoffice.assemblyunit@doeni.gov.uk
Your reference:
Our reference: CQ/81/12

Date: 16 March 2012

Dear Alex

At the Committee meeting on 8 March 2012 a member raised the issue of unfinished roads and would like to know how many there are and what actions the Department are taking to address the issue through planning regulations.

Where full planning permission is granted for a housing development this will be subject to a private streets condition stating that the width, position and arrangement of the internal streets shall be as indicated on the approved drawing. A Private Streets Determination will be carried out in conjunction with DRD Roads service prior to granting planning permission.

While there is a time limit for commencement of development, 5 years in the case of full planning permission, there is no time limit stipulated in planning law whereby a developer must complete the development including the internal streets of a development.

The key legislation that governs the eventual adoption of new roads in housing developments are the Private Streets (NI) Order 1980 and the Private Streets (Amendment) (NI) order 1992. This legislation requires developers to make provision for the cost of street works and to secure that by means of a bond. The process of seeking the bond follows the grant of planning permission.

It is considered that the current private streets legislation and procedures is the most appropriate means of ensuring that new roads in housing developments are built to appropriate standards and hence adopted into the public road network when they are completed.

The number of unfinished streets and roads in new housing developments is not known.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO

[by e-mail]

Department of the Environment

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Your reference:
Our reference: CQ/115/12

Date: 17th April 2012

Dear Alex

Following the Committee's meeting on 29 March 2012, the Committee has asked for a response on the following:

"It is the Committee's conviction that Planning should have more responsibility on the issue of unfinished roads by ensuring that a link is created between a planning application and the completion of a development. Members would like to know to what extent a phased approach to development could be incorporated into planning conditions whereby subsequent phases of a development could not commence until the previous phase was finished. This would include the completion and adoption of roads for houses in that phase, sewerage infrastructure provided outside properties as well as within and street lighting installed".

Planning Policy Statement 1, General Principles states that "The Department will base its decisions on planning applications on planning grounds alone. It will not use its planning powers to secure objectives achievable under non-planning legislation, such as the Building Regulations or the Water Act.

The key legislation that governs the eventual adoption of new roads in housing developments are the Private Streets (NI) Order 1980 and the Private Streets (Amendment) (NI) order 1992. This legislation requires developers to make provision for the cost of street works and to secure that by means of a bond. The adoption of sewers in new housing developments is undertaken by Northern Ireland Water under Articles 161 to 163 of the Water and Sewerage Services (Northern Ireland) Order 2006.

While exceptionally Planning may impose a condition requiring a development to be phased or completed to a particular stage, case law indicates that this is not the appropriate mechanism for the completion of roads or sewerage infrastructure given the need for separate consents under the Roads Order and the Water Order. The Courts have laid down the general criteria for the validity of planning conditions and as a matter of policy, conditions should only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other aspects. A condition should only be imposed where there is a definite need for it, and imposing conditions through anxiety to guard against every contingency should be avoided.

While conditions may be imposed to ensure that development proceeds in a certain sequence, it is considered that a condition delaying development over a substantial period is a severe restriction on the benefit of the planning permission granted. Where conditions are imposed to secure that a particular element in a development is provided by a particular stage or before a development is brought into use, the approach adopted must be reasonable and avoid an unjustifiable interference with the way the development is carried out. It is considered that to require the completion and adoption of roads, the provision of sewerage infrastructure and street lighting on a stage by stage basis may amount to unjustifiable interference on the way a development proceeds.

On a practical level a condition requiring that the whole of the development permitted be completed is likely to be difficult to enforce. For example if the reason for failure to complete is financial difficulties experienced by the developer, it is considered that the enforcement of conditions may be unlikely to succeed.

If a large development, such as an estate of houses is left half-complete, this may be due to market changes (for example, a shift in demand from four-bedroom to two-bedroom houses) and it would clearly not be desirable to compel the erection of houses of a type for which there was no demand. In the case in which the construction of a private street is not progressing satisfactorily, Roads Service can issue a notice under the Private Streets Order requiring the execution of all works which are reasonably necessary to bring the street into conformity with regulations.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO

[by e-mail]

Department of the Environment

DOE Private Office
8th Floor
Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Telephone: 028 9025 6022

Email: Privateoffice.assemblyunit@doeni.gov.uk

Your reference: CQ/182/12

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

31 May 2012

Dear Alex

DRD Committee Inquiry on Un-Adopted Roads in Northern Ireland

Introduction

Under the Water (Northern Ireland) Order 1999, the consent of the Department of Environment is required to discharge any trade or sewage effluent to any waterway, or any water contained in underground strata.

This includes effluent from any commercial, industrial or domestic premises. The focus of this paper is to highlight issues with the discharge of sewage effluent from private wastewater treatment systems and pumping stations in the current financial climate.

Background

Private wastewater treatment systems (WWTS) are required to treat sewerage from industry, private housing developments and single dwellings which are unable to connect to the sewerage infrastructure provided and maintained by Northern Ireland Water (NIW).

Pumping stations (PS) may be required to pump sewage from new housing developments to the main Northern Ireland Water (NIW) sewer.

The developer is usually named as the consent holder and is responsible for the maintenance and operation of the WWTS or PS. This involves ensuring the conditions of the consent are met; the system is operational, paying for the electricity supply, maintaining the systems and responding to telemetry in the event of a pump/power failure amongst other issues.

A developer may approach NIW to adopt these systems if they are designed and operated to NIW standards. A number of systems have already been adopted by NIW.

Issues

If a developer goes bankrupt then the systems are, in many cases, no longer maintained and cease to operate effectively thereby failing to meet the obligations of their consent. For a failing PS this means that the sewage produced by the householders is no longer pumped to the sewer which overflows via the emergency overflow, causing pollution. For a WWTS this can also result in an overflow of sewage into local watercourses, onto roads and eventually over the long term appear as blockages in private dwellings.

Once this is reported as a pollution incident, Northern Ireland Environment Agency (NIEA) may instigate enforcement proceedings against the consent holder. If the consent holder is no longer in business or cannot be traced then NIEA are left to pursue the householders, ie. those people making the discharge, in order to ensure that the systems are maintained. The householders are often very reluctant to assume this responsibility and in many cases NIW are asked to adopt these assets. If the systems do not meet the NIW standards then NIW are likely to refuse adoption until they can be brought up to the required standard. This will be difficult to achieve for private householders.

A number of private systems throughout Northern Ireland are no longer being maintained and NIEA are unable to contact the Consent Holder. In many cases the householders are unwilling or financially unable to carry out the necessary improvements in order to meet the NIW standards to allow adoption. They see NIW as being the responsible organisation for the running of these assets and believe that the developers bond covers such scenarios.

The following are samples of the problems currently being faced;

NIEA have recently investigated a private pumping station at Loughadian Brae, Poyntzpass. The owners of the 5 houses appeared at their "wits end" having been passed from pillar to post whilst trying to get a resolution to the matter. The PS appears to be subsiding as the sewage level never rises in the wet well and is not being pumped to the main sewer. There are no working pumps or telemetry and the developer cannot be found. The householders have contacted an engineering company and have been told that the corrective measures needed to bring the PS up to NIW standard would be in the region of £30-40,000. As this PS only serves 5 houses it would be unreasonable to expect the householders to pay this amount. NIEA understands that NIW are not resourced to correct these issues.

A Private wastewater treatment system serving a housing development in Garrison (10 houses sold, 10 partially constructed, 36 sites undeveloped). On 23 April 2012 NIEA become aware that the electrical supply to the WWTS had been disconnected. Power NI explained invoices had been unpaid for approximately 18 months. This 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. NIEA have recently met with residents, Power NI and the Banks administrator in order to try and develop a pragmatic solution. This is ongoing and includes attempts by NIEA to get the Bank to take control of the WWTS until the issues can be resolved. Again the residents are impacted by their inability to get assistance to resolve the matter.

Departmental legal advice is that under the Water Order where no one can be identified as responsible for the consent then individuals (i.e. residents) can be held responsible for the sewage originating in their property. The situation therefore arises that NIEA will legally hold the remaining householder(s) liable both for any impact on the environment and the legal requirement to manage any discharges under the conditions of their consent.

Yours sincerely,

Helen Richmond
DALO
[by e-mail]

Drumbeg Mews' Residents

From: Nicola Steele [nicola_steele@yahoo.co.uk]

To:

CC: +Comm. Regional Dev Public Email

Subject: Case study - DRD Committee Inquiry into Unadopted Roads

FAO: Mr Jimmy Spratt and Mr Pat Doherty

Ref: DRD Committee Inquiry into Unadopted Roads

18 April 2012

Dear Mr Spratt and Mr Doherty,

I would be very grateful for your assistance, as Chair and Deputy Chair of the DRD Committee and as part of your Inquiry into Unadopted Roads, in relation to the unadopted road at Drumbeg Mews, Drumbeg Road, Lisburn.

The development was built 12 years ago and is getting progressively more run-down. Please find attached several photographs which depict the situation. The uneven road surface, the manhole covers set 2-3 inches above ground level and the worsening potholes are a danger to local residents going about their daily business, many of whom are senior citizens and families with small children. The upkeep of the streetlights is also a constant worry and there have been sustained periods of darkness when the lights have been broken. This is not only dangerous to pedestrians, but poses the additional issue of security as there have been several break-ins, attempted break-ins and cars stolen over the last few years.

On behalf of the residents, I have been in contact with Basil McCrea MLA, as our local representative, about the matter and he in turn has contacted Roads Service. I attach a copy of the letter he received, in which Roads Service stated that Drumbeg Mews '....is now on a program for the work to be undertaken...' and '...that this work will be carried out in the near future'. That was in December last year.

The Mews' residents have engaged Hoy Dorman (Consulting Engineers) to act on our behalf in relation to this matter and despite numerous attempts by them to obtain further updates on the progress of the adoption since December, the response from Roads Service has been minimal and very disappointing.

We understand that they have received all the necessary approvals to proceed with the works, however Drumbeg Mews remains on a waiting list at this time as other scheduled works have been prioritised.

Given that the Mews was built in 2000, I trust you would agree that the adoption by Roads Service is long overdue.

I have recently sent another letter to Mr McCrea, requesting further assistance from his office in relation to the matter and I hope that you can also raise the plight of this 12 year old development as part of your Inquiry.

Thank you in anticipation.

Yours sincerely,

Nicola Johnston

(On behalf of the Drumbeg Mews' residents)

Hoy Dorman Consulting

From: Karl Dorman [karl.dorman@hoy-dorman.com]
To: Carlisle, Paul
CC: +Comm. Regional Dev Public Email
Subject: Committee for Regional Development - Committee Inquiry into Unadopted Roads

Paul

I spoke with one of your colleagues earlier this month and was advised that I pass all correspondence relating to the above mentioned Inquiry to yourself. Please refer to letter attached for information. In this letter, correspondence is referred to from Ms Nicola Johnston – this additional information will be sent from her separately to form a package of documentation for consideration by the Committee for Regional Development.

I realise we are beyond the deadline for submission of evidence and a meeting is taking place tomorrow (18 April), but I understand the Committee will meet again on both 02 and 09 May 2012. I do hope our issues can be raised in an appropriate way at either of these subsequent meetings to ensure the Committee Members are made aware of all issues being experienced by the residents of Drumbeg Mews along with the residents of many more developments in a similar state to Drumbeg Mews.

If you require any further information please do not hesitate to get in touch and I would be grateful if you acknowledge receipt of this email and its contents.

Kind regards

Karl Dorman | Chartered Civil Engineer | Director

Hoy Dorman Consulting

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Liverpool Office, Chapel Street Business Centre, 20 Chapel Street, Liverpool, L3 9AG

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Engineering | Planning | Transportation

HoyDorman

ENGINEERING PLANNING TRANSPORTATION

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www.hoy-dorman.com

The Committee for Regional Development
Room 435
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Sent via email

Our Ref: 120417/Drumbeg Mews/PSD/KDtCRD **Your Ref:**

Date: 17 April 2012

Dear Sirs

RE: Drumbeg Mews, Lisburn, BT27 5XA – Enforcement Case No. S/01/0261

We have been engaged by Drumbeg Mews Residents Association (Ms Nicola Johnston) to look after their interests in relation to the adoption of the road surface, associated storm/foul drainage and street lighting located within the above named development. The development has been constructed for approximately 12 years and therefore the adoption of the internal development roads is long overdue. Existing conditions within the development in relation to roads and drainage are as follows:

- Road surfaced up to binder course level with associated kerbing (potholes in binder course, kerbs chipped, kerb trip hazards)
- Street lighting installed (some not operational)
- NI Water storm and foul drainage installed (no visible issues although flooding has occurred at the entrance to the development in periods of heavy rainfall)

Ms Johnston has written several letters to Mr Basil McCrea (Lagan Valley Constituency Office) highlighting the plight of the Drumbeg Mews Residents and has raised safety concerns with ironwork (gullies and manhole covers) not properly set and pot holes present which pose significant trip hazards for residents within the development. In addition, there have been personal safety and security issues with street lighting not operational during the hours of darkness for prolonged periods. A response was received from Roads Service (dated 23/12/2011) stating that Drumbeg Mews was on a program of works to have the road adopted and it is intended that this work be carried out in the near future. To date, no indication of when works are scheduled to take place has been given by Roads Service.

We initiated contact with Roads Service Enforcement Section on 23/11/2011 and our email correspondence is attached for reference. In summary, we offered our services to Roads Service to assist in obtaining any information that may be required for the adoption of this development to take place. We also spoke with NI Water to obtain information relating to what may be required for their Article 17 agreement (now Article 161). Our approach has always been positive and we realise that there are mechanisms for approval within the various Government Departments and these must be followed.

The responses received to date from Roads Service all point towards 'resource issues' as to why this development has not been completed and adopted within a reasonable time. No specific time frame has ever been given by Roads Service for completion of this development. The Drumbeg Mews Residents Association is becoming increasingly frustrated with the lack of information available; hence they feel the need

Directors
Martin Hoy BEng (Hons) CEng MIEI MCIHT MICE
Karl Dorman MEng (Hons) CEng MIEI MCE MCIHT
Cemina Jobling BSc Dip IT MRP

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to raise their concerns at this level. The Residents Association acknowledge that Roads Service have initiated the adoption process using their enforcement powers, but the length of time taken for this process to happen has not been reasonable.

We have enclosed Roads Service guidance on Private Streets Enforcement for your information. This document states,

'Where a private street is not properly constructed within a reasonable time, the Department may initiate enforcement action under Article 11 of The Order, requiring the responsible person to complete the works within a specified time. Where such Notice is not complied with, the Department may execute the works and recover costs from the developer and/or surety as appropriate.'

A further clause under Private Streets Enforcement (2 Failure to Complete Street Works) states,

'Where a developer fails to properly complete street works within one year from the date on which the building(s) is (are) first occupied, or such longer period as the Department thinks reasonable, the Department shall issue a notice to the responsible person, to require completion of the works. If this requirement is not complied with, the Department may execute the street works and recover expenses from each responsible person. On completion of the works, the road becomes a public road.'

It is our understanding that the developer (Harmony Developments) applied for and received a 50% bond reduction from Roads Service on completion of preliminary works to the development roads and drainage. Enforcement action was issued by Roads Service against the developer of Drumbeg Mews on 08 June 2010 with a response required from the developer within 28 days. Since that time the developer has went out of business and it is understood a response from Harmony Developments was never received by Roads Service. One further issue that is present within the development is a private area of surfacing that is not included within the Roads Service adoption area. This area has been surfaced up to binder course level (similar to the condition of the road area to be adopted by Roads Service). A wearing course surface is needed to finish this part of the development and remove trip hazards from kerbing located at the interface between the adoption area and private area. The Drumbeg Residents Association is seeking this area to be finished to an appropriate standard that is fit for purpose when Roads Service are undertaking works on the adoption road area. We seek to clarify Roads Service position on such road surface areas that are located outside adopted areas which have been unfinished by a developer that has since went out of business.

It is our opinion that a reasonable time has now passed in relation to the adoption of this development and appropriate actions should be taken immediately by Roads Service to rectify the unsafe condition of Drumbeg Mews and adopt the road surface and street lighting. As part of this adoption process, NI Water should adopt both storm/foul drainage within the development.

If further clarification of our position is required, we are happy to meet both the Committee for Regional Development and Roads Service to bring this adoption issue at Drumbeg Mews to an amicable conclusion.

Yours faithfully
for **Hoy & Dorman Limited**



Karl Dorman MEng CEng MICE MIEI MCIHT
Director – Chartered Civil Engineer

m. +44 (0) 77 8975 8158
e. karl.dorman@hoy-dorman.com

Karl Dorman

From: Robinson, Andrew <Andrew.Robinson@drdni.gov.uk>
Sent: 28 March 2012 12:52
To: karl.dorman@hoy-dorman.com
Cc: Foreman, Colin; Penney, Ivan; Morgan, Gerry
Subject: RE: Drumbeg Mews, Drumbeg Road, Lisburn, BT27 5XA (S/01/0261)

Sensitivity: Confidential

Karl

In answer to you e-mail dated 10 February I would comment;

Roads Service have all the necessary approvals to proceed with the works, however Drumbeg Mews remains on a waiting list at this time as other scheduled works have been prioritised. When Drumbeg Mews reaches the top of the priority list the Department's contractor shall complete the development and adoption shall proceed.

As previously noted I have no direct control over the time scales though it seems likely now that the works shall commence some time in the new financial year. The resource difficulties noted in prior e-mails simply refers to the fact that there is more work than contractors.

I am sorry I cannot be more helpful at this time, when I receive up-dates I shall contact you.

Regards

Andrew

From: Karl Dorman [mailto:karl.dorman@hoy-dorman.com]
Sent: 27 March 2012 11:20
To: Robinson, Andrew
Cc: Foreman, Colin; Miskelly, David; Morgan, Gerry
Subject: RE: Drumbeg Mews, Drumbeg Road, Lisburn, BT27 5XA (S/01/0261)
Sensitivity: Confidential

Andrew

I was disappointed not to get any response to my email below sent on 10 February 2012. Can you please update me with progress on this matter?

Kind regards
Karl

From: Karl Dorman [mailto:karl.dorman@hoy-dorman.com]
Sent: 10 February 2012 13:07
To: 'Robinson, Andrew'
Subject: RE: Drumbeg Mews, Drumbeg Road, Lisburn, BT27 5XA (S/01/0261)
Sensitivity: Confidential

Andrew

Can you give me an update on the status of Drumbeg Mews? Can you confirm if Roads Service Street Lighting and Roads Service Section Office have the necessary approvals in place to proceed? I have spoken to John Quinn in NI Water and he is waiting on a CCTV survey to confirm the storm discharge point from the site – once the discharge point has been confirmed then NI Water are happy to give approval to proceed.

As you will appreciate the residents in Drumbeg Mews are getting quite frustrated at the lack of action. Can you also confirm a timescale for the completion of works and what the issues are in relation to resources? I note that Patrick Bradley are working along the Hillhall Road on a scheme so they would be well placed to complete works at Drumbeg Mews as the contract is likely to be above the £10k threshold for minor works.

Kind regards
Karl

From: Robinson, Andrew [<mailto:Andrew.Robinson@drdni.gov.uk>]
Sent: 09 January 2012 13:58
To: karl.dorman@hoy-dorman.com
Cc: Foreman, Colin; Miskelly, David; Morgan, Gerry
Subject: RE: Drumbeg Mews, Drumbeg Road, Lisburn, BT27 5XA (S/01/0261)
Sensitivity: Confidential

Karl

The Section Office is not waiting on further information; Drumbeg Mews is simply on a waiting list that is under pressure due to resource issues. When Drumbeg Mews reaches the top of the list the contractor shall complete the development and adoption shall proceed.

Regards

Andrew

From: Karl Dorman [<mailto:karl.dorman@hoy-dorman.com>]
Sent: 09 January 2012 10:02
To: Robinson, Andrew
Cc: Foreman, Colin; Miskelly, David; Morgan, Gerry
Subject: RE: Drumbeg Mews, Drumbeg Road, Lisburn, BT27 5XA (S/01/0261)
Sensitivity: Confidential

Andrew

Thanks for getting back to me, much appreciated. I understand these things take both time and resource and there is a process to be followed. If there is anything that we can assist with to expedite this process then we would happy to help out. The residents of Drumbeg Mews are becoming increasingly frustrated with the length of time this has taken, hence their letter to Mr McCrea, and with no timescales available for completion of the development then they may extend our current brief.

Can you let me know what information the Section Office are waiting on to approve this development and, if necessary, this can be considered a Freedom of Information request.

I look forward to hearing from you.

Kind regards
Karl

From: Robinson, Andrew [<mailto:Andrew.Robinson@drdni.gov.uk>]
Sent: 09 January 2012 09:36
To: karl.dorman@hoy-dorman.com
Cc: Foreman, Colin; Miskelly, David; Morgan, Gerry
Subject: RE: Drumbeg Mews, Drumbeg Road, Lisburn, BT27 5XA (S/01/0261)
Sensitivity: Confidential

Karl

The Article 11 process has commenced, however I have no direct control regarding timescales and completion dates. These are controlled through the section office whom are committed to complete the development you refer to; but do have other commitments previously scheduled. Drumbeg Mews is on a waiting list that is under pressure due to resource issues.

I am sorry I cannot be more helpful at this time. I will continue to liaise with the section office and when I receive any up-dates I shall contact you.

Regards

Andrew

From: Karl Dorman [<mailto:karl.dorman@hoy-dorman.com>]
Sent: 06 January 2012 15:07
To: Robinson, Andrew
Cc: Foreman, Colin
Subject: RE: Drumbeg Mews, Drumbeg Road, Lisburn, BT27 5XA (S/01/0261)
Sensitivity: Confidential

Andrew

I wanted to follow up on my email below. Can you provide me with an update please? I would like to be able to report back to our Client with timescales and approximate date for completion.

Many thanks.

Kind regards
Karl

From: Karl Dorman [<mailto:karl.dorman@hoy-dorman.com>]
Sent: 20 December 2011 11:49
To: 'andrew.robinson@drdni.gov.uk'
Cc: 'colin.foreman@drdni.gov.uk'
Subject: Drumbeg Mews, Drumbeg Road, Lisburn, BT27 5XA (S/01/0261)
Sensitivity: Confidential

Andrew

I was following up on our telephone conversation on 23/11/2011 regarding the above named development. As discussed we are representing the Residents Association at Drumbeg Mews. You mentioned that you would chase up the current status of this enforcement and come back to me.

Since we spoke Nicola Johnston has sent a letter to Basil McCrea MLA (on behalf of the Drumbeg Residents Association) requesting Roads Service to undertake works to complete this development - his response is attached for reference.

We are happy to assist Roads Service and NI Water on what may be required to allow this development to be completed to PSD standards.

Please provide an update on the current status. I look forward to hearing from you.

Regards

Karl Dorman | Chartered Civil Engineer | Director

Hoy Dorman
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Engineering | Planning | Transportation

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PRIVATE STREETS ENFORCEMENT

Enforcement action under Private Streets legislation falls into two main categories:

1. Working (building) without a Bond and Agreement
2. Failure to satisfactorily complete Street works within a reasonable time

1 Bond and Agreement

Where it is proposed to erect a building for which plans are required, in accordance with building regulations, to be deposited with a district council and the building will have a frontage onto a private street, it is, subject to exemptions under Article 24(2), an offence to undertake the erection of a building until the Developer has entered into an Agreement and Bond with the Department, undertaking liability for such street works as may be indicated in the agreement.

2 Failure to Complete Street works

Where a developer fails to properly complete street works within one year from the date on which the building(s) is (are) first occupied, or such longer period as the Department thinks reasonable, the Department shall issue a notice to the responsible person, to require completion of the works. If this requirement is not complied with, the Department may execute the street works and recover expenses from each responsible person. On completion of the works, the road becomes a public road.

A person on whom such notice is served may, within 28 days from the date of the notice, serve notice of an appeal on the Department before making an appeal to a court of summary jurisdiction, on either or both of the following grounds:-

- a) that he/she is not the responsible person;
- b) that the street is not a private street.

Roads Service will initiate enforcement action for non-compliance, as required.

September 2007

The Law Society of Northern Ireland

THE LAW SOCIETY
OF NORTHERN IRELAND



Ref. AH/CC/AF/letters/

From: The Chief Executive

16 May 2012

Mr. Paul Carlisle
Committee Clerk
Committee for Regional Development
Room 254
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear 

RE: UNADOPTED ROADS

I refer to the recent appearance of the Law Society of Northern Ireland before the Committee to assist in the Inquiry into Unadopted Roads.

During the evidence session, Mr. McNarry MLA suggested that it would be of assistance to the Committee's Inquiry if the Society was to canvas its members to seek views on the issue of unadopted roads and the problems solicitors' clients have encountered.

I write to confirm that the Society has issued a note to the profession requesting the aforementioned information.

I will provide an update to the Committee once the deadline has passed. If there is any further way in which the Society can be of assistance please let me know.

Yours 



Alan Hunter
Chief Executive

The Law Society of Northern Ireland, 96 Victoria Street, Belfast, BT1 3GN
Tel. 028 9023 1614 Fax. 028 9023 2606 DX 422 NR Belfast 1

www.lawsoc-ni.org



FS 566753

Northern Ireland Environment Agency

From: Knox, John [mailto:John.Knox@doeni.gov.uk]
Sent: 01 March 2012 10:42
To: On behalf of the NI Assembly Communications Office
Subject: Unadopted Road

For the Regional Development committee

Road Inver Heights Larne

I have lived there since 29/4/1994

Building started 1992

Developer : G McGreevey Hilltown Newry

Bond put down with Roads Service

Builder left site on 1996

To date the Road has not been adopted due to

- (a) Sewerage System not acceptable to Water Service specifications
- (b) Drainage on the road
- (c) residents building on the service strip

With the help of other residents we have been in touch with Roads Service
repairs carried out to the roads surface - September 2011

Currently working towards full adoption

If you need more information please let me know

Regards

John Knox
Northern Ireland Environment Agency
Hazardous Waste/TFS Section

Klondyke Building
1st Floor
Cromac Avenue
Gasworks Business Park
Lower Ormeau Road
Belfast BT7 2JA

Tele 90569316
Mobile 07881 524399

Northern Ireland Local Government Association (NILGA)

NILGA response to the Assembly's Regional Development Committee Call for Evidence on Un-adopted Roads within District Council areas

Introduction

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties.

NILGA is pleased to be able to have an opportunity to comment on the issue of un-adopted roads, particularly as councils have a number of concerns in relation to several areas of service delivery associated with this issue.

To assist the Committee, NILGA wrote to all District Councils in Northern Ireland to ascertain the level and extent of this issue. To date, 14 Councils have responded to advise NILGA of their position.

Context

There have been several instances in new residential developments where the residents have found themselves purchasing and occupying properties where the roads and footways have never been adopted by Roads Service - as a result of the developer leaving the site unfinished.

The collapse in the construction sector has exacerbated this problem.

In the current climate, where many developers have ceased trading, many sites are left incomplete with the roads and sewers below them not yet adopted – and indeed often still unfit for adoption.

These cases remain in the ownership/ responsibility of the developer/ bank/ receiver, but usually if the developer is bankrupt, the bank or receiver only has a charge on the property, leaving a service and legal loophole.

There are also issues with historic un-adopted roads, situated around old mills and mill housing developments (as well as in other particular circumstances). These roadways have been a source of frustration leading to a service delivery impact for Councils. Councillors and residents are united in the knowledge that, with most of these developments being over 100 years old, the cost to bring such roadways up to adoption standard is totally unviable for those who live there.

In terms of service impact, unfinished and un-adopted roads partially complete with some dwellings occupied, can mean firstly that residents have to take and collect their bins to and from an adopted road, which can be problematic, not least, for the elderly and infirm. Secondly, it means that until the roads are adopted, the Dog Warden Service has no jurisdiction within such developments regarding the ongoing issues of dog fouling and littering. It has also been reported that in the case of unfinished new developments, residents do not have street lighting operating.

Roads and footways that remain un-adopted also lead to devalued properties; health and safety issues for Council staff and the general public with hazardous road surfaces and other risks from construction traffic; damage to vehicles and lifting equipment and the subsequent costs of repairs.

Additionally, on conveyance of a new property on a development site, it has been reported that there has been an understanding that some paperwork will follow later (normally Article 17 and Article 19 documents). However, if the road/ sewers are not adopted, mortgage lenders often query why not, and have been known to refuse to provide a mortgage which affects homeowners and prospective homeowners alike.

Refuse Collection

A substantial number of councils have reported being unable to collect refuse from un-adopted roads, resulting in residents having to present their bins at adopted roads. There have been a significant number of ongoing complaints from residents within developments where bins have to be taken to designated collection points over a long period of time.

Craigavon Borough Council has provided NILGA with an example to illustrate this issue. The Council has explained that initially residents have to bring their bins to a common collection point at the edge of the development. This can be 200 – 300m and causes mix ups/ loss of bins and aggravates the owner adjacent to the multiple bin collection point. At this time, the Council will survey the development and determine whether it is safe to access. If not, the Council will not go in. At this time, there is no access for assisted lifts (pull outs) so older/ disadvantaged residents will not receive this help. Furthermore, when there is some of the road surfaced the Council must be careful as there is additional risk of injury to Council staff. There can also be difficulties moving heavy bins over uneven roads/ paths and high curbs, into the RCV bin lifters.

Sewers

The sewers will not be adopted below an un-adopted road. If sewers have not been adopted by NI Water, then the responsibility for inspection/ enforcement rests with Council Building Control sections. Problems arise as these sewers, due to the intention to have them adopted have not been seen (and cannot be) by Building Control sections; additionally there is no guidance on required standards.

In the Lisburn City Council area, for example, there are more than 20 sites that may be the subject of Article 11 Notices from the Department of Regional Development, who are at present calling in Road Bonds to try and complete the necessary works to get the roadways to a Private Streets determination standard. The same sites also have no Article 159 or Article 161 Notices from NI Water in place for foul and storm sewer adoptions. This is impacting on the home owners of partially finished sites where sewerage schemes have not been inspected to ensure compliance outside the curtilage of each site, to the main adopted sewer in the roadway.

Whilst the adoption of sewers remains incomplete, the homeowners could become responsible for any alterations necessary to bring the drainage scheme up to an acceptable standard of compliance. This can be compounded with the introduction of pumping stations which manage storage and movement of effluent on-site, thus environmental health issues can emerge due to lack of proper installation – another legal and service related loophole which can have major implications in specific cases where such alterations are necessary and costly.

Environmental Safety

A number of councils have encountered environmental health (safety) issues concerning unadopted roads, specifically regarding poor surfaces. Also responsibility for the removal of flytipped waste is of concern. For un-adopted roads, responsibility for both of these matters rests with the owners of the properties. The same scenario applies to rear alleyways, and difficulties we can encounter regarding erecting signage i.e. dog fouling signs.

Indemnity & Insurance

It is asserted that Councils are open to claims that their vehicles damaged the road or drainage if the Department of Regional Development has not formally adopted the road.

Larne Borough Council has advised that their bin lorries are able to access these areas after the first layer of tarmac is put down, but until the surface is brought up to the adopted standard, Council is unable to put street sweeping vehicles into these areas as the drainage covers and road gullies are at a higher level and cause damage to sweeper brushes and other equipment. These areas are therefore not able to be maintained to the required standard in terms of detritus and litter control as per the DOE Statutory Code of Practice.

Furthermore, Cookstown District Council has reported claims from developers as a result of damage to uncompleted road surfaces by heavy refuse collection vehicles.

It is also asserted that insurance companies refuse to cover vehicles entering un-adopted roads.

In an effort to try to improve the situation, Omagh District Council has agreed that if the road is finished to a good standard and the developer indemnify the council against any claim for the damage; the Council will consider providing a service along the road. Problems may arise, however, where the developer no longer exists as a company or has gone into administration

Other Related Issues

Back Alleyways

Another issue of concern, specifically for Belfast City Council, is un-adopted back alleyways. Many of these areas have poor, uneven surfaces; are overgrown with vegetation; often have surface water accumulations and are generally in a very poor state of repair. Generally, they are not maintained by anyone. This creates difficulties for residents in terms of their ability to leave bins for collection and for Council staff in moving bins within these areas. Given the dangerous nature of some un-adopted back alleyways, it is difficult, and in some instances prohibitive, for Council staff to collect bins, litter pick or remove bulky items. Councils believe that this position is not acceptable or sustainable and have requested that due consideration is given to how unadopted alleyways are kept maintained and fit-for-purpose.

Rights of Way

Public Rights of Way often cross or follow the route of private (un-adopted) roads. Whilst this is generally not an issue, and the existence of the Right of Way can be amply evidenced, on occasion, private landowners move to obstruct the Right of Way; or falls into disrepair. Under the Access to the Countryside Act, Councils have a duty to keep Rights of Way free from encroachment or obstruction. This can lead to lengthy legal cases where the landowner refuses to accept the existence of the Right of Way.

Where the Right of Way route falls into disrepair, and presents a real risk to the public, Councils are faced with the issue of who is liable for its upkeep. Where the Council has been encouraging the public to use a Right of Way that is over an un-adopted 'private' road, and the private landowner claims that the presence of said public (encouraged to be there by the Council) has contributed to the state of the road, then the question of whether the Council should contribute to the upkeep and repair of the road can come to the fore. An example of this is along the North Down Coastal Path at Cultra, where a stretch of the path runs along the privately owned Station Road. The sea wall over this stretch is currently exposed to coastal erosion, and North Down Borough Council has to review its liability regarding protection of what is both a private un-adopted road, and a public Right of Way.

By way of contrast, Derry City Council has advised that there are circa 50 streets, parks and roads in their area which remain un-adopted. The areas involved range from small courts with

2 – 4 houses to housing estates involving 25 houses. Derry City Council have advised that these un-adopted areas rarely have any impact on the delivery of Council services as refuse collection continue to operate and the street cleansing service operate at most locations.

Recommendations

1. NILGA calls for an urgent review of the current Adoption of Streets Order to include protection against incomplete developments and to give more powers of enforcement to Roads Service and DOE Planning Service with improved co-ordination between both organisations. In particular, it is imperative that the Statutory Orders 'Bond' is strengthened to guarantee the proper completion of roads by developers, or, if necessary, by Roads Service so that residents are afforded proper protection. This review should also take account of the anomalies which exist for residents currently living in un-adopted developments.
2. NILGA asserts that when developers go out of business, their 'bond' may be used to complete works, but this is a lengthy process. It is suggested that legislation should be amended so that the adopted roads should be put in place at an earlier stage of development.
3. NILGA recommends that the level of bond assessed needs to be increased and should have an inflationary element built in to take care of delayed adoptions.
4. NILGA respectfully and firmly recommends that DRD Roads Service is encouraged to actively target developers who have responsibility for un-adopted streets and establish a time bound, fine oriented, programme for compliance.
5. NILGA asserts that there is a real risk in this economic climate that incomplete private sector developments, including those being scrutinised by agencies such as NAMA result in a much greater problem because of uncompleted developments being released back on to the market. It is recommended that the Committee take this issue into consideration.
6. Finally, NILGA recommends that the Committee considers steps that could be taken to provide more protection to the consumer, particularly in the instance where someone purchases a property, aware that the road outside the property has not been adopted, but perhaps is unaware of the implications of this. A protocol and protection policy would, at least, need to be actively considered in the interests of the public we collectively serve.

Northern Ireland Water

Northern Ireland Water
Westland House
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Tel 02890 354744

Mr P Carlisle
Clerk to the Committee for Regional Development
Room 254
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Date: 23rd May 2012

Dear Mr Carlisle

INQUIRY INTO UNADOPTED ROADS

NIW was pleased to attend the oral evidence session of the Regional Development Committee inquiry into Unadopted Roads. Thank you for your letter of 10th May 2012 detailing the issues which the Committee are seeking additional information. Taking the points raised in order our response is as follows:-

NAMA Properties

In relation to the number of sites with unadopted sewers which are controlled or being enforced by NAMA, NI Water does not hold any bond securities provided by NAMA. Bond securities are generally provided by banks and insurance companies, or as a cash bond. As you are aware sewers within a development may not be adopted because the developer has gone out of business and the site is in control of an investor or administrator. In general NIW would not be in a position to ascertain which sites have an involvement from NAMA, as we work directly with administrators or receivers in trying to resolve the outstanding matters preventing sewer adoption. We recognise the possibility that some of the developments where NIW is working with administrators may have NAMA involvement or ownership.

We have reviewed the document 'Properties Subject to Enforcement Action' prepared by the National Asset Management Agency and as suggested, cross referenced with our records, and the status of each of the sites is summarised in Table 1, below. It should be noted that we have been unable to uniquely reference all of the sites to our database as in some instances the address information is too vague. A site by site listing can be found in Appendix A.

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SV12G036.DCO

Classification	No of Sites	% Sites
Sewers Already Adopted	3	3 %
Sewers subject to an Art 161 or Art 17 agreement	30	29 %
• Preliminary adoption stage	2	2 %
Sites where design was submitted to NIW but no formal Art 161 agreement in place		
• Pre- assessment	23	23 %
Private - Site Not to be Adopted	2	2 %
Sites where NAMA information is insufficient to make an assessment	42	41 %

Table 1: Status of Development Sites listed as subject to Enforcement Action by NAMA.

Turning to the questions raised by the Committee:

“You state there is no mandatory requirement for a developer to submit a design layout to Planning Service or, indeed, for notifying or entering into an Article 161 Agreement, how significant is this?”

The article 161 agreement will detail the sewerage scheme that, once constructed to a specified standard, can be adopted by NI Water. If a developer constructs a scheme that is unapproved by NI Water, it may not be of a satisfactory design or standard that will allow it to be adopted. We contend that not making the requirement for a 161 agreement a mandatory pre-requisite of Article 32 of the Private Streets (Northern Ireland) 1980 has the potential to result in sub standard sewerage infrastructure being constructed, which is not fit for purpose. Potential problems arising from such unadopted sewerage systems are breakdown of pumping stations, smells and odours, and flooding due to inadequate hydraulic capacity which are in themselves significant issues.

Where NIW is providing water and sewerage infrastructure under a shared responsibility scheme, is the developer required to pay their contribution to the scheme before work commences and in a lump sum? What are the main problems experienced by NIW with shared responsibility schemes?

It should be noted that NI Water operates the shared responsibility scheme for water main installation only. Under this scheme the developer carries out trench excavation, bedding, backfills the trench and completes reinstatement and NIW provides, lays, joints and commissions the water main and associated fittings. When the water main is commissioned NIW has immediate maintenance responsibility. The water main is funded under the reasonable cost allowance, and where the cost of installation is assessed to be more than the cost of installing the main, the Developer is required to pay the shortfall contribution in advance of the work commencing. We do not experience many problems with shared responsibility water main schemes.

However, in line with water industry practice across the United Kingdom, the installation of sewers within developments has not been the subject of a shared

responsibility process. The standard practice across the UK is that development sewers are designed and installed by the Developer at his expense, and on completion are offered to the water company for adoption. A shared responsibility process for installation of on-site sewers would be difficult to implement, because:

- (i) the developer would lose control of his construction programme;
- (ii) trench excavation for deep sewers would be difficult to manage and have potential health and safety issues keeping deep trenches open and safe in advance of the NIW contractor programming his work on the site;
- (iii) the nature and variation in the work would make it difficult to cost
- (iv) the developer would be required to pay NIW full reasonable costs for the work delivered.

You have expressed concerns at the value of bonds as a result of delays in sewers and roads being adopted. What do you consider to be the main contributory factors to bonds becoming ineffective? Do you have any proposals on how to improve or replace the bond system?

Bonds become ineffective due to:

- (i) the length of time that has passed from the initial agreement being authorised by NIW; the installation of the sewers by the Developer, the identification of defects and the current costs of remedial work,
- (ii) the increased rates for cost of sewer installation in recent years;
- (iii) additional costs associated with sewer installation, for example lands fill costs.

Having made the Article 161 agreement mandatory, a solution is to place a time bound requirement on the Developer to request the adoption of sewers within one year of development being completed. In the current economic climate small to medium development sites could take several years before the site is completed and the sewerage system offered for adoption. Recent indications are that developers are applying for adoption of sewerage systems as soon as the criteria for adoption are met, and NIW is responding accordingly. This has been brought about because of pressures placed on the Developers from the bond providers.

By implication bond securities are ineffective where a Developer is unable to obtain an adequate bond and a bond is non-existent. This is increasingly a problem for Developers as bond providers have tightened the criteria required to qualify for a bond. In some instances Developers may commence house building in the belief that house sales will be the foundation on which to move forward with sewer installation and potential adoption. The implication of this is that NIW will not authorise an agreement for future adoption of the sewerage system if the Developer is unable to provide a bond security.

Steps taken by NIW to improve the process include discussion with the Construction Employers Federation:

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- Provision has been made for Developers to submit a phased sewer layout for smaller and more manageable parts of developments.
- Sewer adoption procedures have been changed to permit full adoption of sewers when the development has over fifty percent occupancy. This has been reduced from the previous criteria of 80 percent occupancy
- To enable Developers to provide assurance to their bond providers, NIW has reintroduced a conditional facility for Developers to apply for a fifty percent bond reduction after sewers have been installed to a prescribed standard, but dwellings may not necessarily be occupied.

Alternatives to the bond security system - in considering the Committee's request to put forward an alternative to the bond system NI Water have considered two possible options:

1. Sewer Requisition - sewers could be requisitioned by the developer, who would be required to pay NI Water for the cost of installation. However, it is likely that this would be unpopular with Developers who would have potentially four issues:
 - (i) This would affect his control over site construction programmes and could delay the sale of dwellings.
 - (ii) On-site sewers within the development are customarily installed at the expense of the Developer, hence the Developer would have to pay NIW the full 100% costs for sewer requisitions
 - (iii) The Developer would be able to construct the sewers at a much cheaper rate than NI Water, using his own equipment and labour, which are already mobilised on site.
 - (iv) Currently a Developer can manage and install the site sewers to meet his house building programme, e.g. to service a few dwellings or a full site. Inrequisitioning a complete sewer installation, where the developer pays the full costs of the work to NIW, this may place a demand on his capital funding and present difficulties for the Developer.
2. Approved Installation Scheme – based on an approved list of sewer installation contractors agreed by NIW, who would work with developers to construct sewers to the specified standard, and on completion sewers would be offered to NIW for adoption where they meet the adoption criteria. However there is a risk in this that NIW would have responsibility for sewers that are under utilised in the event the development does not proceed or complete. This would have increased operational maintenance costs for NIW, and lead to increased problems where waste water pumping stations are an integral part of the development sewerage system.

The preferred option is to retain the current bond security system, under pinned with a mandatory Article 161 Agreement for the future adoption of sewers, as neither of the two alternatives above provides an improvement to the current procedures. However the value of the bond is critical to the process and our assessment is that the value set at 40% of the estimated cost of sewers in a final surface completed development is adequate and suitable for the current adoption process. There is

currently some discussion across UK water companies that the bond value should be reviewed and set at 100% of the estimated cost of sewer installation in a completed finished surface development

The slow adoption of sewers and roads at present appears to be exacerbated by the current economic climate. Has the joint NI Water Developers Services and Roads Services Private Streets Group taken any steps to improve the situation?

The adoption of sewers and streets is a developer led process, where the onus is on the Developer to advise NIW when the sewers are constructed to a specified standard and at a stage where they can be presented for adoption.

In recognition of the number of sewers in developments which remain unadopted long after construction has finished the Sewer Adoptions / Private Streets Group (SAPS Group) prepared a list of backlog development sites and has been working through these over the recent years. NIW has taken a proactive approach to backlog sites and have taken forward the adoption of sewers in some 110 nr developments over a 2 year period, thus enabling Roads Service to adopt the development streets.

Additionally, in response to the difficulties with unadopted sewers and streets, the SAPS Group discussed potential Article 11 enforcement sites and prioritised these to take forward the implementation of the enforcement procedures. As indicated at the presentation to DRD Committee, sewers in some 46 developments were adopted in the past two years under the enforcement procedure thus permitting the streets to be adopted. This is not a quick procedure and often involves lengthy discussions with developers, agents and on occasion residents.

NIW initiated a series of education awareness workshops with Developers and Developer's Forums to explain the requirements under the Water and Sewerage Services (Northern Ireland) Order 2006, and took them through the sewers for adoption procedures from application to appraisal / approval and inspection / adoption.

Channels were also opened with conveyancing solicitors when NIW took the lead in setting up seminars in 2010 and 2011 in association with the Law Society. This has proved effective and has resulted in an increased number of contacts and enquiries from solicitors who are involved in first-time sale and first –time resale of dwellings in developments.

Can you provide additional information on potential EU infractions caused by inherited infrastructure / pumping stations?

NI Water is unaware of any historical or pending EU legislation where NIW would be in contravention of legal procedures arising from unadopted infrastructure or pumping stations? There are no known or pending litigation where NIW has implemented enforcement proceedings to adopt sewerage systems.

Unadopted development sewerage systems are designated as private sewers and remain the responsibility of the developer and his assignees or successors. Where a sewerage system includes a waste water pumping station, the developer is required to obtain a Water Order Consent from NIEA. If the pumping station does not operate satisfactorily and a break down results in pollution of a water course, NIEA may implement legal proceedings against the Developer.

I trust this provides answers to the questions raised by the Committee, if you have any further questions or matters arising, please do not hesitate to refer these for our attention.

Yours sincerely

Yours Sincerely,

Sara Venning

Sara Venning
Director of Customer Service Delivery



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Being Dealt With By: G Morgan
Direct Line: 9025 3091

Our Ref: 65306

Date: 23 December 2011

Dear Mr McCrea

ADOPTION OF DRUMBEG MEWS, LISBURN

Thank you for your letter dated 7 December 2011, which on the behalf of your constituents you ask that the adoption of the Mews by Roads Service and NI Water be prioritised.

Enforcement under Article 11 of the Private Streets (NI) Order for the completion of the works was issued in June 2010 and this site is now on a program for the work to be undertaken to have the road adopted.

It is intended that this work will be carried out in the near future.

Yours sincerely

A handwritten signature in black ink that reads "Gerry Morgan".

GERRY MORGAN
Development Control 1



INVESTOR IN PEOPLE

HYDE/ROADS/NPC/G/11/RG3003, GM



Drumbeg Mews - pothole



Drumbeg Mews - raised manhole covers



Drumbeg Mews - wide shot of uneven road surface



Northern Ireland
Assembly

Appendix 6

Northern Ireland Assembly Research Papers



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

November 2011

NIAR 000-00

Des McKibbin

Adoption of New Roads in Private Developments and the use of Bonds

1 Background

There are many instances across Northern Ireland where people have purchased and occupied homes in private developments where the roads and footways are left unfinished. The Private Streets (Northern Ireland) Order 1980 was brought in to protect homeowners from such a situation arising by placing a duty on developers to consult with Roads Service on the design of the street and ensure it meets their standards. Developers must also take out a surety bond before they begin construction to ensure Roads Service can complete the works should they be unable to.

2 Adoption of Roads

In each UK region provision is made for the local authorities (England, Wales and Scotland) or Highway authorities (NI Roads Service) to enter into agreements with private developers to adopt streets in new developments (hereby referred to as highways) for future maintenance, provided they are constructed to a prescribed specification. The relevant legislation for each jurisdiction is:

- The Highways Act (England/Wales) 1980;
- The Roads (Scotland) Act 1984; and
- Private Streets (Northern Ireland) Order 1980.

The one significant difference between the Northern Ireland legislation is that Developers have a statutory duty to consult with Roads Service with regards their street layout, design and specification prior to beginning construction, while in GB this is not the case.

In Ireland adoption is known as 'taking in charge'. The regulations are laid out in Section 180 of the Planning and Development Act 2000 which was commenced in March 2002 it is similar in effect to the UK equivalents. There are however, statutory provisions under Section 180 of the Act, empowering residents to compel a local authority to take in charge in cases where this has not happened, after a period of seven years. In this case the policy is to address problem or longstanding cases on a phased basis with priority given to estates that have been left unfinished/not taken into charge for the longest period.

2 Use of Road Bonds

The adoption of a highway relieves the developer from their liability to maintain that highway. Generally fees are required in advance according to the size of the development to cover the costs in preparing the agreement and inspecting the work during construction. A bond is deposited to cover the cost of bringing the highway up to an adoptable standard should the developer become insolvent or is unable to meet their obligation.

A road bond is a type of surety bond which guarantees to a local authority/highway agency that a road, footpath or street lighting will be provided to a standard which they can adopt. Bonds are generally provided by a third party surety company in the form of an insurance bond. Roads Service accepts cash deposits in lieu of a bond, e.g. if a developer has difficulty in securing a bond from a third party. The value of the bond required is determined by the relevant authority and based upon what costs they would incur if required to complete the works.

A developer can request bond reductions on reaching pre-determined stages of construction, this means the developers premium to the surety company is reduced as less default monies are required to be available. The general practice is to consider bond reductions in key stages during construction. Roads Service has four key stages; 90% of the bond is removed at stage 3 when a Preliminary Certificate is issued. Each of the jurisdictions will only completely remove the bond and issue a Completion Certificate & Adopt the highway when the all major milestones have been completed and the street has been properly maintained for one year after issue of Preliminary Certificate.

3 Incomplete development

Many of the relevant highway authorities report some difficulties in completing the adoption process.

- Many developers are finding it difficult to raise the full bond amounts due to on-going financial commitments and there are instances where developers have progressed with developments before securing a bond. Effectively this means that the street will be progressed without the necessary inspections meaning the highway authority will be unable to assess elements of the construction, such as the sub base layers or the drainage.
- In addition to a road adoption, developers must complete a similar process to have the sewers beneath adopted. This also requires a bond and often leads to delays in adoption when the process is not followed.
- Adoption delays can arise in relation to disputes over design checks; supervision fee payments; construction methodology issues; and disputes over long term liability payments;
- A particularly common problem within the current economic climate is that developers can slow down or stop construction part way through phases of construction often waiting to sell a house or houses before progressing. When houses are not selling re-evaluation of house types and numbers are often considered leading to delays in adoption.

4 Invoking a bond

Highway authorities must give careful consideration to invoking a bond and most view it as a last resort. It would appear incumbent upon highway authorities to proceed in these situations with all due diligence and give developers an opportunity to comply. It is in nobody's interest to force the hand of a developer as in many cases the intention to complete the work is there but there may be valid reasons why this is moving slowly. Even in cases where a developer has become insolvent it may be the case that there is a larger holding company or administrator in charge which again means time must be taken to see if sufficient resources will become available to complete the work. It is only at the point when all other avenues have been explored that the bond will be invoked.

5 Alternative measure

An alternative to invoking the bond has been developed by Milton Keynes Council. This requires a cash deposit from developers equal to 10% of the Bond. If for example residents begin to occupy homes before adoption of maintenance is required during the one year period between issue of preliminary and completion the Council gives the developer notice to complete the works. If, after 28 days, they have not been completed, the Council carries out the works itself and recovers the moneys expended from the cash deposit. On the issue of the Final Certificate of Adoption at the end of the maintenance period the cash deposit or what is left will be refunded to the developer.¹ One difficulty with this requirement is that developers who have insufficient funds may choose to proceed without a bond and therefore remove the need for a deposit, greatly increasing the likelihood of problems during later stages of development.

6 Discussion

The Private Streets (Northern Ireland) Order 1980 was brought in to protect homebuyers being left in a private street with poorly finished roads and footways. Already Northern Ireland is the only part of the United Kingdom where developers have a duty to consult the highway authority prior to building and while this safeguards against bad design, there are still many situations where this is not done. According to Roads Service when the legislation is followed it works well, however, this has not always been the case.

It seems the economic downturn and particularly the Boom-Bust scenario experienced in the housing market is a significant factor with regards to unfinished and un-adopted roads. In the height of the boom housing developers got on with building houses, often without having proper bonds in place; homebuyers queued outside estate agents eager to get a good deal; while conveyance lawyers got on with selling them, without perhaps carrying out all the necessary checks.

The credit crunch left people unable to get mortgages and house prices plummeted. Many developers found themselves in a situation where they could not sell houses and could not finish ones they had started. In order to correct the problem consumers must understand the buyer beware rule: it is their duty as the purchaser to examine, judge, and test a product they mean to purchase. Their solicitor should also assume some responsibility and ensure their client is not purchasing a substandard product; at the very least they must ensure there is a surety bond in place to ensure works will be finished. Where no road bond exists, frontagers (home owners) could ultimately have to bear the costs of bringing the development roads up to adoptable standards before Roads Service can assume maintenance responsibility.

The practice within Roads Service is to try as far as possible to allow developers to complete works themselves within a reasonable time. Roads Service is not legally responsible for unfinished development roads where the developer has not taken out a bond as required by the current Private Streets legislation. The question is whether the public purse can / should bear the costs of completing development roads where a developer has failed to make adequate provision for this, as required by law.

1 Milton Keynes Council (2005) Un-adopted Streets Problems and Recommendations [online] available from: <http://nia1.me/jm>



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Research and Information Service Briefing Paper

Paper 000/00

9th December 2011

NIAR 000-00

Des McKibbin

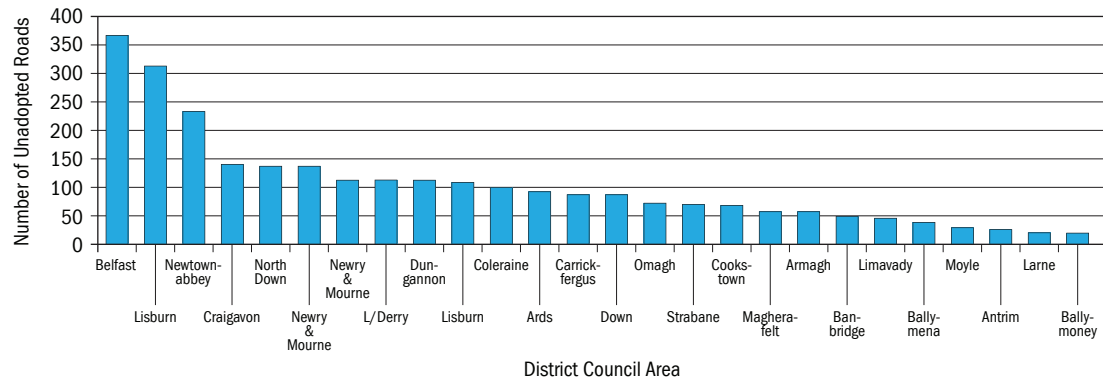
Unadopted roads in private developments

1 Background

Following consideration of RalSe publication (767-11) entitled: 'Adoption of New Roads in Private Developments and the use of Bonds' members requested further information on the number of unadopted roads in Northern Ireland, classified by District Council Area.

2 Unadopted roads by District Council Area

- There are a total of 2732 unadopted roads in Northern Ireland;
- Belfast City Council area has the largest number of unadopted roads (367);
- Lisburn City Council area has 314 unadopted roads;
- Collectively Belfast, Lisburn and Newtownabbey councils have over one third of the unadopted roads (915);
- Ballymoney has the fewest unadopted roads (21).

Figure 1: Unadopted roads classified by District Council Area**Number of unadopted roads Classified by District Council Area**

Council Area	No. of Unadopted Roads
Belfast	367
Lisburn	314
Newtownabbey	234
Craigavon	141
North Down	138
Enniskillen	138
Newry and Mourne	115
L/Derry	115
Dungannon	114
Castlereagh	110
Coleraine	100
Ards	94
Carickfergus	89
Down	88
Omagh	74
Strabane	72
Cookstown	70
Magherafelt	59
Armagh	59
Banbridge	50
Limavady	47
Ballymena	41
Moyle	32
Antrim	28
Larne	22
Ballymoney	21

Notes:

The definition of an unadopted road is a road/footpath, or portion of road/ footpath or housing development, that has been determined for adoption through the planning process, however, construction work has either not yet started, or is not yet completed.

Some of the unadopted roads listed in the table above are bonded extents, which can form parts of complete developments.

Roads Service does not hold information on property management companies which are no longer in operation. I would also advise that Roads Service is not routinely notified once a developer has gone into liquidation/administration and it may be some months before officials become aware that an individual or a company has gone into insolvency.



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Appendix 7

Other Documents Relevant to the Inquiry

Press Release



2 February 2012

CRD 06/11/12

Committee Commences Inquiry into Unadopted Roads

At its meeting on 1 February 2012, the Northern Ireland Assembly Committee for Regional Development agreed to commence an inquiry into Unadopted Roads in Northern Ireland.

Speaking on behalf of the Committee, Chairperson Jimmy Spratt MLA, said:

“Members of the Committee have expressed concern at the number of developments and other areas where roads and footpaths remain unfinished and sewerage systems have not been completed to a satisfactory level, despite developers having entered into Surety Bonds.”

The Committee will now begin a formal six week consultation period.

ENDS

Committee Membership:

The Chairperson of the Committee is Jimmy Spratt MLA

The Deputy Chairperson is Pat Doherty MP MLA

The Committee has a further nine members:

- Roy Beggs MLA
- Joe Byrne MLA
- Michael Copeland MLA
- Stewart Dickson MLA
- Dolores Kelly MLA
- Seán Lynch MLA
- Ian McCrea MLA
- Stephen Moutray MLA
- Cathal Ó hOisín MLA

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Correspondence to National Asset Management Agency



Committee for Regional Development

Paul Carlisle
Clerk to the Committee for Regional Development
Room 254
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

13th March 2012

Mr Martin Whelan
Head of Relationship Management
National Asset Management Agency
Treasury Building
Grand Canal Street
Dublin 2

Committee Inquiry into Unadopted Roads In Northern Ireland

Dear Mr Whelan

I refer to the above and to your correspondence dated 16th February 2012.

The Committee for Regional Development has considered your response and has asked that NAMA confirms that it does not issue or hold any surety bonds for works in Northern Ireland where a street planning function has been exercised and a bond has been placed under the Private Streets (Northern Ireland) Order 1980.

Yours faithfully,



Paul Carlisle

Clerk to the Committee for Regional Development

Tel: 028 90521063

Email: committee.regionaldevelopment@niassembly.gov.uk

National Asset Management Agency



Gníomhaireacht Náisiúnta um Bhainistíocht Sócmhainní
National Asset Management Agency

Mr. Paul Carlisle
Northern Ireland Assembly
Committee for Regional Development
Room 254
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

23rd March 2012

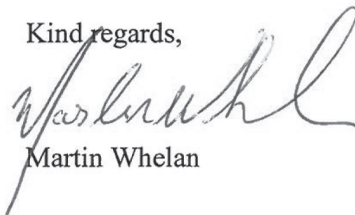
Committee Inquiry into Upadopted Roads in Northern Ireland

Dear Mr. Carlisle,

Further to your recent correspondence in respect of the above, I can confirm that NAMA neither issues nor holds any surety bonds for works in Northern Ireland with reference to the Private Streets (Northern Ireland) Order 1980.

As always, should you have any further queries in relation to this or any other matter, please don't hesitate to contact me.

Kind regards,



Martin Whelan

Committee for the Environment



Committee for Regional Development

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Fax: +44 (0)28 9052 1795

9 February 2011

To: Paul Carlisle
Clerk to the Committee for Regional Development

From: Alex McGarel
Clerk to the Committee for the Environment

Date: 02 April 2012

Subject: Inquiry into Unadopted Roads in Northern Ireland

1. At a recent meeting of the Committee for the Environment a member raised a number of concerns regarding unfinished roads.
2. In relation to this, at its meeting on 29 March 2012, the Environment Committee considered a Research and Information briefing note on unadopted roads in Northern Ireland. The research was commissioned by the Committee for Regional Development as part of its Inquiry into Unadopted Roads in Northern Ireland.
3. Members were particularly interested in the potential for planning conditions to be used to prevent or reduce this problem, for example by requiring developments to take place in phases with no subsequent phase being allowed to commence until a previous phase was totally complete including roads finished and adopted, sewage infrastructure intact and street lights erected etc.
4. Being aware that the Regional Development Committee is currently considering this issue, members agreed to write asking that they are kept informed of the progress of the Inquiry into Unfinished Roads in Northern Ireland and any recommendations it may make in relation to this issue.
5. I would look forward to your response.

Alex McGarel
Clerk
Committee for the Environment

Memo to Committee for the Environment

Committee for Regional Development

Room 435

Parliament Buildings

Tel: 028 9052 1063

Fax: committee.regionaldevelopment@niassembly.gov.uk

From: Paul Carlisle – Clerk to the Committee

To: Committee for Environment

Date: 19 April 2012

Subject: Inquiry into Un-adopted Roads in Northern Ireland

At its meeting on 18 April 2012, the Committee for Regional Development agreed to keep the Committee for the Environment informed of the progress of the Inquiry into Un-adopted Roads in Northern Ireland and any recommendations that it might make in relation to the issue. The Committee also agreed to introduce your correspondence as written evidence to the Inquiry.

Regards



Paul Carlisle

Clerk to the Committee



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