



Northern Ireland
Assembly

Committee for Regional Development

OFFICIAL REPORT (Hansard)

**Inquiry into Unadopted Roads:
Departmental Briefing**

9 May 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Pat Doherty (Deputy Chairperson)

Mr John Dallat

Mr Stewart Dickson

Mr Ross Hussey

Mrs Dolores Kelly

Mr Ian McCrea

Mr David McNarry

Mr Stephen Moutray

Mr Cathal Ó hOisín

Witnesses:

Mr Francis Miskelly

Department for Regional Development

Dr Andrew Murray

Department for Regional Development

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.

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.

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.

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.

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.

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.

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.

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.

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?

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.

The Deputy Chairperson: What is the actual backlog figure?

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.

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?

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.

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?

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.

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.

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.

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.

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?

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 —

Mr McNarry: Have you changed your mind lately?

Dr Murray: No, we have not.

Mr McNarry: If the Committee were to suggest it, what would you do?

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 —

Mr McNarry: I understand.

Dr Murray: — or by saying that the legislation does address that.

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?

Dr Murray: I do not think that there are geographical trends.

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.

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?

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.

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.

Finally, do you also have a list of NAMA sites?

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.

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.

Mr McNarry: Why is that?

Dr Murray: NAMA has the same responsibilities as any other administrator.

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?

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.

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.

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.

Mr McNarry: I want you to appreciate that we are only trying to help.

Mr Miskelly: By all means.

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.

Dr Murray: We can certainly try to get that information.

Mr McNarry: That would be very helpful.

Dr Murray: I am not sure why you want it, because there is no difference.

Mr McNarry: I assure you that I have reasons.

Dr Murray: That is OK.

Mr McNarry: I would not waste your time.

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?

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.

Mr Dickson: Would the introduction of a mandatory bond and pre-construction requirements be a help or a hindrance to those few percentage points?

Dr Murray: There are already requirements.

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.

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.

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.

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.

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?

Dr Murray: I am not happy with the position that the construction industry is in, which has led to some issues.

Mr Dallat: I did not ask you about the construction industry. That industry will look after itself.

Dr Murray: The issue is balance. Roads Service adopts roads that we think are a necessary part of the transport infrastructure.

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.

Dr Murray: I do not know the example that you are speaking of. I do not know what stage —

Mr Dallat: Forget about it. I am just talking generally.

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.

Mr Dallat: The developer is bankrupt.

Dr Murray: Right. In that case, I presume that we will call in the bond, and we will carry out the remedial works.

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.

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.

Mr Dallat: I understand that. It is not about prevention. The result of the inquiry might be the cure.

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.

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?

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.

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.

Mrs D Kelly: But, it is 18 months.

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.

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.

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?

Dr Murray: Current legislation does allow the determination process to be done in batches. In fact, we would do that to facilitate developers.

Mr Ó hOisín: It is not time factored.

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.

Mr McNarry: Can I just ask a point of clarification?

The Deputy Chairperson: Yes.

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?

Dr Murray: Yes.

The Deputy Chairperson: Thanks very much for your presentation. I am sure you will be back before us some time in the future.