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# Key Points

## *Take Back the City: Planning*

7<sup>th</sup> May 2020

Online Webinar

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### **Speakers:**

**Nicholas Quinn** - solicitor, Ó Muirigh Solicitors  
**Seán Brady & Paige Jennings** - #BuildHomesNow  
**Cormac McAleer** - Greencastle People's Office

### **Attendance:**

39

### **Purpose:**

#BuildHomesNow, like many other groups fighting for social, economic and environmental justice, have had negative experiences of the planning process. The bias in favour of commercial developments and private interests seems embedded into the letter of the law and the decision-making process of the state and goes beyond mere political preference. How do we engage, navigate and/or circumvent these processes to put people and the environment first?



The Take Back the City webinar series (four in total) aims to provide opportunities for the exchange of ideas on how to bring forward public housing across the City of Belfast. Our rapidly changing world means that there is now more than ever a need to ensure equity in access to housing which addresses at its core the key issues of climate change and sustainability (social, ecological and financial).

#BuildHomesNow will use the information gathered from these webinars to launch a public initiative aimed at crowdsourcing ideas on developing plans for the Mackie's site which can act as an exemplar and model for other developments to learn from and build upon. This public initiative is being supported by the New York based Dunn Development Corporation and the Community Preservation Corporation in the summer of 2020.

### **Local context:**

#### **Housing in law**

Unlike a growing number of other jurisdictions around the world, the right to adequate housing is not enshrined in law by the UK state. Instead, laws relevant to housing regulate social housing provision, provide specific duties around homelessness and dictate minimal fitness standards which define habitable accommodation. The duties arising from these laws are held by both the Housing Executive and the Department for Communities. By law, planning functions which do not have a 'regional' impact – like most housing developments - have been devolved to local councils. Within councils, a Local Development Plan shapes the exercise of planning functions by elected officials.

## **Public duties in relation to housing and Mackie's**

Interest in the Mackie's site spans a number of public authorities with overlapping and related duties. The Department for Communities (owner of Mackie's site for over a decade) is responsible for:

- "provision of decent, affordable, sustainable homes";
- "bringing divided communities together";
- "tackling disadvantage and promoting equality of opportunity by reducing poverty"; and
- "addressing inequality and disadvantage."

The Northern Ireland Housing Executive (NIHE), a statutory authority accountable to the Department for Communities, owns and manages social housing (along with housing associations); has statutory duties to address homelessness; and manages the Social Housing Development Programme which shapes where – and how many – new homes are developed annually. Belfast City Council has responsibility for planning decisions taken across the city and for the development of the Local Development Plan – which includes the Mackie's site.

## **Policy framework on housing**

The NI Executive's Programme for Government has developed indicators to monitor its performance in addressing housing need which measure the number of new social housing units developed every year and, crucially, the number of households (individuals or families) experiencing housing stress. Spatial elements of Programme for Government are found in the Regional Development Strategy 2035, which includes the Strategic Policy Planning Statement defining what social and affordable housing is – and therefore what type of housing state resources should support. In 2019 the Department for Communities took steps to introduce various additional 'intermediate' private ownership models into the definition of 'affordable housing', alongside co-ownership and social housing.

## **Covid-19 and Housing Policy**

The Department for Communities response to the Covid-19 pandemic demonstrates that housing policy can change extremely quickly in a progressive direction, given political will and sufficient resources. To date, policy and practice change have included almost ending rough sleeping and taking measures to grant tenants additional protections from evictions.

## **Housing stress in West Belfast**

Regardless of measures adopted during the emergency, housing stress and homelessness is rising year on year, with West Belfast being the worst impacted area in the state. The need for new and additional homes to target housing stress and homelessness is overwhelmingly situated in predominately Catholic areas of both North and West Belfast. The current Social Housing Development Plan, which shapes new housing provision, has shown to be totally inadequate to address this need.

## **Mackie's campaign**

#BuildHomesNow's campaign for new public housing on the Mackie's site emerged out of a photo-mapping exercise of empty land by homeless activists back in 2015. Mackie's, and other key sites across the city, has the potential to make a significant impact on acute housing need. The campaign has political support from elected officials in the area, but this has not translated into the development of public housing proposals for the site. Currently, the outline plans for the Mackie's site, which is owned by the Department for Communities, include: a private residential development adjacent to the site; and Belfast City Council's proposed plan for an urban greenway in west Belfast - funded by European Union Peace IV - one section of which goes through the Mackie's site.

The Department for Communities plan to transfer ownership of the section of the site to Belfast City Council to facilitate this. There was a flawed consultation on this proposal which treated Mackie's, a brownfield site, as open space. An adjacent open green space, Woodvale Park, was initially planned to form part of the greenway but later plans changed to route the greenway through Mackie's instead. No equality screening was undertaken for the proposed development

The map used in the Mackie's consultation process indicates that nearly half of the Department for Communities site is to be the subject of a '3rd party lands transfer'. Despite requests, no information has been provided to the public about who will get the land, and for what purpose it is being transferred.

### **Key examples:**

#### **Hillview, North Belfast**

Hillview is a 10.5 acre, vacant, privately-owned site identified in the same 2015 photo-mapping exercise by homelessness activists that discovered Mackie's. It effectively operated as a peace wall between Ardoyne and the Shankill.

In 2016-17 #BuildHomesNow activists worked with Barsav Architects to develop plans for the site which included proposals for:

- 130 homes (a modest estimate), of mixed occupancy levels, built to a high specification, including the use of sustainable materials, and promoting energy efficiency;
- community facilities and shop frontage to restore pedestrian activity in a derelict area of Belfast;
- green space and play facilities for children.

The activists gained the support of five political parties for the development including the Alliance Party, Green Party, People Before Profit, SDLP and Sinn Féin. However the Housing Executive were on record stating that "community consensus" was necessary for any housing development on the site. In effect this meant that consent from political unionism was a prerequisite for the development of social housing. North Belfast experiences chronic religious inequality in the provision of housing. If inequality is to be addressed, close to 100% of new and additional homes need to be provided for persons living in areas with a predominately 'Catholic' community background. It was also a constituency with a narrowing unionist electoral majority and political unionism had a track record of opposing housing developments which would address this inequality.

The planning application submitted by the developer proposed further commercial development to the total exclusion of housing provision. #BuildHomesNow wanted this application rejected to enable alternative plans to be progressed, addressing the chronic housing need. The planning process was deeply frustrating and alienating for residents and activists, who experienced a process deeply biased towards developer interests and deaf to the need to prioritise addressing homelessness. The Hillview Retail Park is in the portfolio of a big company, Killultagh Estates. Excluded from consideration during the process were:

- the failed commercial ventures on the site in the past;
- the operation of an unlawful market on this site for years (involving paramilitary groups as revealed by BBC Spotlight);
- the financial support the site's owners had received from the public purse (either through NAMA bailouts or rates relief);
- and the very statistics on housing need and inequality.

***‘Peace lines are territorial lines that define housing policy... it doesn’t matter if you are right, or if you have policy behind you – if a developer with resources wants to get a plan through council they will.’***

**– Seán Brady, PPR**

Families attending the planning application decision meeting were forced to wait hours before the developer’s legal representative arrived and, when he did, the opening gambit in presentation of the application was to inform elected members of the planning committee that should they reject the application, they would be fined as it met all of the requirements under planning legislation. Despite this warning, six councillors (SDLP, Sinn Féin, Alliance) voted against the retail development and seven voted for. Votes were largely split along sectarian lines and the developer’s plan was approved.

### **Greencastle Save our Sperrins anti-mining campaign.**

The Sperrins is in an Area of Outstanding Natural Beauty (AONB) within Fermanagh and Omagh District Council. Canadian-owned Dalradian gold mining exploration company appeared in 2010, licensed by the Department for the Economy, with rights to explore 122,000 hectares of land in Tyrone and Derry. Local communities concerned with this development began organising in 2013 and faced a company that had managed to win the favour of politicians and community groups through extensive lobbying, donations to local community groups, and advertisements in the local media. There needed to be an opposition voice.

Campaigners believed initially that there was an environmental protection system in place, and that when officials found out the truth about the human and environmental impact of gold mining industry they would ‘do the right thing’. But this was not the case. The planning system has ended up operating in favour of big business. Local communities watched as “transparency and accountability went out the window”. Campaigners had to build common interests with other groups and use legal challenges to make their case.

The type of mining involved was proven to be toxic to water, the land and the air, and of course to human health. But the public ‘consultation’ in November 2016 did not even release the environmental impact assessment documentation for consideration. A year later, the company submitted a planning application 10,000 pages long, and the Department for the Infrastructure designated it a ‘regionally significant project’. This designation meant that the decision was taken away from the local council’s elected planning committee and dealt with by the Department – thus further distancing it from decision making processes which are in closer proximity to both the public feeling and the communities who will be most sharply impacted in the short and long-term.

With the help of Community Places and Friends of the Earth, the local communities launched a broad number of tactics to expose the sham consultation process and combat the plans. The company had local media on their side, so the group identified alternative ways of reaching people – leaflets, meetings and online. They held protests at the company’s offices and at entrances to the site, staged direct actions at industry dinners, ensured a caravan presence on the sites, used direct action to stop diggers and got an independent candidate elected to council on an anti-mining platform. Cormac chained himself to a rig for a day to stop the drilling.

***‘At times it feels like the odds are stacked against us’*** – **Cormac McAleer, Save Our Sperrins**

The communities have used celebrations of small wins to bring people together, and to make connections. They network nationally and internationally with other mining-affected communities. Their activists disrupted an international corporate mining meeting in Toronto in 2018 as a way of challenging the company. A judicial review against a Northern Ireland Environment Agency decision allowing the company to discharge arsenic, copper, cadmium and other chemicals into a local river was successful in November 2019.

Their letter writing campaign to the Department of Infrastructure against the company's activities has passed the 35,000 mark. This is a hard thing for Dalradian to overcome. The company has just contributed £50,000 to Marie Curie locally, which the community interprets as signs that it is panicking. Campaigners have asked Marie Curie to reconsider accepting this money - the radon gas released by this mining is cancer causing so taking the money is short sighted. Ulster Wildlife Trust have also accepted Dalradian as a sponsor.

There is a **public inquiry** coming and the Minister will have the ultimate decision. The group has had to hire in expertise (barristers) for support and has found it hard to engage expert services – as the company buys up a lot of best local expertise for itself.

### Key messages to take away:

#### General

- Community support is key to getting wins. Knowing there is a collective voice behind the actions gives them more weight. 'Without this, democracy is in danger.'
- Housing policy and practice can change quickly when it needs to (as demonstrated by Department for Communities Covid-19 response on protection of social renters).
- Although councillors have a democratic mandate, they rarely use their powers in opposition to council officials and lawyers.
- Engaging in consultation may feel futile, but try to be innovative and use it as an opportunity. 'Save Our Sperrins' community organising is an example – there are many organising techniques and tactics you can use in the face of what looks like overwhelming odds. You will get wins and it is important to celebrate these.
- There is a need to explore all avenues for legally challenging these processes through judicial review or other forms of strategic litigation. Focusing in on the adverse impact to particularly vulnerable groups such as children is required
- In response to Covid-19, the Infrastructure Minister has suspended pre-application community consultation requirements temporarily on the grounds of 'safety'. This needs to be monitored carefully as it has also changed the 'scheme of delegation' so that fewer planning applications have to go to the planning committee of elected councillors. There is one council that has tried to argue that a quarry does not need to go through the committee under 'scheme of delegation' rules.

#### On Mackie's

- Duty bearers with responsibility for housing (Department for Communities and Belfast City Council) are also actors on this site and have a duty to be accountable and transparent. Public bodies hold the key to the Mackie's development but they have 'prevaricated'. Activists should consider the possibility of legal action to force the Department for Communities to use at least part of the site for social housing.
- Under Belfast City Council plans for the Department for Communities-owned site roughly half would seemingly go for the proposed greenway (though the site is brownfield and not the 'open space' it is being treated as) and half to an unspecified '3rd party lands transfer'. Are these really the best uses of the land by the two institutions with most responsibility for meeting the acute housing need that exists? This contradiction must be highlighted.

- Belfast City Council's 'reconnecting open spaces' is effectively 'a big 21<sup>st</sup> century peace line with trees' and associated funding for local community groups has been used to bring people onside. We need better than this.

#### How to progress from here:

- **Judicial review of planning decisions.** Markets Development Association brought a judicial review against Belfast City Council's plans for a big office block in an area of serious social housing need. Ultimately the planning permission was quashed. Major community organising and support was key to this happening, and it was a boost for morale because it may influence judicial decisions in the future. A recent similar decision at the Gasworks has been stayed.
- **Force public bodies to exercise discretion and use dormant state-owned land in Belfast** to ease the suffering of local families (insecurity, overcrowding) by building homes.
- **Consider focusing on the legal duties of Housing Executive, Health & Social Care Trusts towards children in need.** Children have a right to development – they cannot have a childhood in the squalid conditions many are forced to endure as a result of the state's failure to develop adequate social housing. Strategic litigation could be used to highlight public bodies' duty towards homeless children.