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KENT ENVIRONMENT & COMMUNITY NETWORK
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Kent CT4 8BD England

Mr. Jeremy Wates
Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland
E-mail: public.participation@unece.org

January 15 2010

Dear Jeremy Wates

Re: Non compliance of UK with certain provisions in the Aarhus Convention namely Articles 3(1),3(2),3(3),3(4), 9(2) and 9(4).

I am writing on behalf of the Kent Environment and Community Network ('KECN'). KECN is a recently constituted environmental organisation which we set up in order to campaign for environmental justice primarily in Kent through measures such as the sharing of expertise and resources with other campaigning groups and individuals.

KECN members have long been involved in campaigning on environmental matters for many years and we are well aware of the obstacles in the UK to achieving environmental justice. KECN members are grass root campaigners; we have been involved with many ground breaking campaigns including Twyford Down, Reclaim the Streets, A249 Protest, Kingsnorth 6, Lydden Circuit, Sainsbury's superstore, Cambridge, Dargate Waste Dump and more local campaigns such as Thanet Way, Lyminge Forest, Thruxted Mill, China Gateway and the Canterbury College relocation. Collectively, we are running or are involved in many live campaigns such as the Hythe Imperial Hotel housing plans, Lydd airport, the Girne American University (Canterbury) expansion plans and so on.

We had been looking forward to the promised improvements to environmental decision making when the UK became a signatory to the UNECE Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters, usually referred to as the 1998 "Aarhus Convention" in 2005. Unfortunately, some of the key provisions have still not been incorporated into the British legal system and we are therefore unable to rely on them. The situation has been compounded by the Local Government Act 2000, which did away with most committees in local government and introduced the "Cabinet System": all the responsibility for a given topic is vested in a single portfolio-holder. The objective was to speed up the system but it is undemocratic and frequently abused.

Third parties have no right of to appeal planning applications so the only way a third party can get a substantive hearing is by trying to get the planning application called-in so that an inquiry can be held. The Government's call-in policy is based on the "Caborn Statement." We enclose a recent letter from the Government to a KECN member David Plumstead: see Appendix 1. It sets out the Government's position for the avoidance of doubt. In practice call-ins are restricted to less than 100 out of half a million applications a year. Effectively this means that Government has abandoned policing its own policies. In practice Government Agencies are too short of money to contemplate judicial review, and local authorities tow the developer's line in the hope of planning gain. This is a further infringement of UK legal obligations.

The Sainsbury's Superstore in Hythe application is very unlikely to be called in by the Government despite the fact that it will have significant adverse impacts upon the viability of the historic town centre of Hythe, its environment and heritage. That is why we are writing to you at this stage. No doubt as you are aware, the only remaining 'effective' course of action for the people of Hythe would be to initiate judicial review proceedings. However, this is contrary to Aarhus because judicial review is prohibitively expensive and does not permit a review of the substance of the decision made. The expense of bringing a case and the risk of costs mean that many meritorious environmental claims are not pursued: see Appendix 2.

KECN is asking that you investigate our complaint as a matter of urgency. The cabinet system in local government, the Government's restrictive "Caborn Statement" and the financial risks involved in judicial review mean that environmental justice is denied to most of the population. We are more than happy to provide evidence supporting all the claims in this letter and to provide further examples of how environmental justice falls far below what is required by Aarhus.

We look forward to hearing from you at your earliest convenience.

Yours sincerely

Dr Geoff Meaden

Copy to Rt. Hon John Denham MP
Secretary of State for Communities and Local Government

Appendix 1

GOVERNMENT OFFICE
FOR THE SOUTH EAST

Representing Central Government in the South East

David Plumstead
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Community Network
The Spout House
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22 December 2009

GOSE Ref: 030988/09
Your Ref:

Dear Sir

Planning application for the demolition of existing buildings, construction of a new 5731sqm retail superstore (Sainsbury's), together with associated engineering at Smith Industries, Military Road, Hythe, Shepway, Kent.

Thank your letter of 4 November 2009 to the Rt Hon Ben Bradshaw in relation to the above application. Your letter has been passed to this office as we deal with planning issues in your area.

The Secretary of State is currently considering the above application under the call-in criteria following a request from a member of the public. If an application is called in, it is then referred to the Planning Inspectorate to arrange for a public inquiry.

To make a decision on whether or not to call in, we use the call in criteria which are set out in "Caborn Statement" (Hansard Written Answer, 16 June 1999, 138). This explains that the Secretary of State's policy is to be very selective about calling in planning applications. He will, in general, only take this step if planning issues of more than local importance are involved. Such cases may include, for example, those which, in his opinion:

- May conflict with national policies on important matters;
- Could have significant effects beyond their immediate locality;
- Give rise to substantial regional or national controversy;
- Raise significant architectural and urban design issues; or
- May involve the interests of national security or of foreign Governments.

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Your comments about the proposed development will be taken into account when deciding whether or not the Secretary of State should intervene in this planning application, and we will write to you again in due course.

With reference to your comments about the way the Council dealt with the application, the Secretary of State's position is that local planning authorities are responsible to their electorate, not to the Secretary of State, for their conduct in the discharge of their particular planning functions. The Secretary of State does not have a role in policing the statutory procedures: that is a matter for the courts.

In addition, he does not have a supervisory role to oversee the manner in which local authorities carry out their own internal duties in relation to planning control: such a role would be seen to be weakening the independence of authorities in exercising those planning responsibilities which Parliament has placed upon them.

I suggest that if you are dissatisfied with the way in which the local planning authority, Shepway District Council in this instance, has carried out its responsibilities you should in the first instance make a complaint to them through their complaints procedure. If you are not satisfied with the response, you should then contact the Local Government Ombudsman. Any charges of misapplication of the law would need to be pursued through the courts. Details on how to complain to the Local Government Ombudsman are available from the website www.lgo.org.uk or advice line: 0845 602 1983.

Yours faithfully

Mrs Shafkat Khan

Send wendy info — on Aarhus too

Send -> info on Aarhus Convention
To David - send mail details.

APPENDIX 2

A lady in her seventies from Kent, has spent almost 6 years of her life defending a village green application. The local authority refused her application in December 2009. She was lucky enough to have pro bono assistance from the Kent Law Clinic (a pro bono legal advice centre). She was advised by them not to judicially review the local authority's decision not to grant village green status despite good grounds for a legal challenge because the challenge would cost her cost at least £10,000 and more than double of that if she lost and that she would be unlikely to be granted a Protective Costs Order because she had a private interest in the matter (as per the Corner House ruling). She therefore had no choice but to abandon her fight of six years.

In judicial review proceedings, the substance of the matter is not reviewed. For example, In 2007, a group of unhappy residents in a village in Kent wanted to judicially review the local authority's decision to grant planning permission for a development in the garden of a listed property in a conservation area. They managed to persuade the local parish council to back the claim, only up to £3,000. Fortunately, a barrister gave his services for a reduced fee and he was able to find strong procedural errors. The decision was quashed by way of a consent order. A few months later, the same application went before the planning committee where it was passed. There were no procedural grounds to challenge this new decision and so local residents were left without a legal remedy.

To reiterate, it is virtually impossible for third parties to get an inquiry. Firstly, one must be either a lawyer or self-educated enough to know when it is possible to ask the Secretary of State for inquiry and resourceful enough to pull out all the stops to convince the Secretary of State that the matter at hand is exceptional enough to be called-in. In 2008, the local authority gave itself permission to construct a coach park in a very sensitive area in Canterbury. Unhappy residents, concerned about the visual impacts on an Ancient Monument, the World Heritage Site and impacts of more air pollution near an Area of Air Quality Management fought long and hard to get the matter called- in by the Secretary of State with pro bono help from a well respected planning consultant. This not unsurprisingly failed and the coach park and adverse environmental impacts went ahead because judicial review was not possible. There were no marked procedural errors and local residents did not have enough money to proceed further, in any event.

More recently in 2009, KECN tried to get the Secretary of State to call-in a planning application for the extension of a Park and Ride facility on Grade 1 Agricultural land. The local authority had mistakenly asserted that the extension did not require an EIA when in fact as a matter of UK law it did. KECN wrote to the Secretary of State and asked that the matter be called so that the EIA issue could be considered. The Secretary of State refused to do so. KECN did not realise the extent of the 'procedural' mistake made until it was too late to challenge the decision and even if it had, it would have been difficult to raise the considerable sum of money before the deadline for bringing proceedings.