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Secretary to the Aarhus Convention Compliance
Committee
Economic Commission for Europe
Environment, Housing and Land
Management Division
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Dear Ms Smagadi

Re: Communication 45 to the Aarhus Convention Compliance Committee concerning failure of the UK to comply with provisions of the Convention related to public participation and access to justice within the planning system.

Thank you for a copy of the letter from DEFRA to the ACCC dated December 22 2011. This is our response to it and why we believe a hearing into these matters is urgently required

General Overview of Public Participation in Practice

Matters have deteriorated still further since our communication was lodged in 2010. We attach published articles which illustrate our concerns:

- 'Does the UK Planning System Need a Tea Party' **Journal of Planning and Environmental Law** (Issue 3 2012)
- 'LEPs May Win Formal Planning Role in Cities', & 'LEP Timeline' **Planning, Journal of Royal Town Planning Institute** (16 .12.11) p.p.12,13)
- 'Liverpool Eyes Mayoral Powers' & 'Transport Cash Devolution Planned', **Planning, Journal of Royal Town Planning Institute** (10.2.12) p.p. 12,13

These papers illustrate how accountability in cities is being concentrated still further from cabinets to mayors in order to obtain money from the Treasury, and the growing powers of unelected Local Enterprise Partnerships.

Scope of Article 6

It is made clear in the Implementation Guide that, although there are similarities between Article 6 and the EIA process, they are in fact different. The Implementation Guide states '...the test as to whether the Convention applies to a particular decision-making procedure is *not* whether that procedure is required to include EIA , or is considered as "environmental-decision-making" under national law¹, but whether the decision making itself 'may have a potentially significant impact on the environment'. By equating 'significance' with categories of development set out in the EIA Regulations, the UK Government sidesteps proposals which communities consider to be damaging.

¹ for example, because EIA is required

Article 7-Plans and Programmes

The Government argues that Local Investment Plans are not plans or programmes because they are not statutory. This argument is disingenuous. Firstly the Aarhus Implementation Guide and the SEA Directive make no distinction between statutory and non-statutory plans. The key point is that the plan or programme needs to relate to the environment. Local Investment Plans do and so will the plans that will be developed by LEPs. However they are not subject to the SEA process. Secondly, the Government argues that the plan or programme will be subject to Article 7 requirements when it is inserted into a statutory plan later in the planning process. The view is naive. In the real world the very act of attaching money to a proposal confers legitimacy, whether it is a planning application or in a development plan. Strategic assessments can always be tailored to fit. There is no such thing as objective truth as choices have to be made. It would be a brave councillor, officer or planning inspector who dared to raise objection to a proposal with funding attached, especially in these austere times.

Local Development Framework

The problem with participation in the formulation of development plans is that it takes place at too late a stage to have any impact. Those representing land use interests work with the Cabinet and produce a document which is then disclosed to backbench councillors and the general public. There is no option to “do nothing” or have “something completely different”. Thus the discussion is limited to versions of the original scheme compiled by the cabinet in conjunction with the private interests.

Summary

KECN is not saying that public participation rights do not exist but rather that they are either limited to certain categories such as “statutory” or rendered ineffectual by being positioned too late in the procedure to be of any substantive value. The UK government does not comply with the spirit of the Convention. The Aarhus Implementation Guide at page 86 states,

‘It must be emphasized that public participation requires more than simply following a set of procedures; it involves public authorities genuinely listening to public input and being open to the possibility of being influenced by it. Ultimately, public participation should result in some increase in the correlation between the views of the participating public and the content of the decision’.

Public participation has no substantive value. It is just a means of making a decision look democratic.