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Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10
Switzerland

Your ref:
Our ref:
Date: 12 March 2018

Dear Ms Marshall

ACCC/C/2017/90: UK comments on the RFA's response to the ACCC's questions dated 16 January 2017

Thank you for providing the UK with an opportunity to comment on the communicant's response to the ACCC's questions in the above matter. The paragraphs below correspond with the paragraph numbers/letters in the communicant's response.

Please provide a chronological outline of the opportunities for public participation (if any) that were available to you in respect of planning application A/2008/0408/F and how you engaged with the formal planning process in this case.

We note that the communicant has not provided a chronology as requested by the Compliance Committee.

- a) In respect of the UK's other observations, the communicant did not qualify as a 'neighbour' under the criteria for neighbour notification and we are of the view that all publicity notifications were met.

The communicant was able to engage in the process and submit objections; furthermore, objections and issues raised did not go "*largely unanswered*" as claimed by the communicant. This is evidenced by the substantial amount of correspondence submitted by the communicant and answered by the UK following the communication

submitted in September 2015. The communicant's objections were well documented and were specifically referenced. Importantly, the communicant's objections (which were outlined in a series of letters) were summarised and considered in the Development Control Officer's Professional Planning Report ('DCOPPR'). The documentary evidence is that the case officer weighed the contents of these objections with all other material planning considerations before recommending approval of the planning application.

b) The application was re-advertised as required. In addition, the communicant was able to make its objections and continued to do so – these objections did not go unanswered.

c) and d) It was mentioned in the hearing in this matter on December 2017, that the administrative arrangements regarding the development management report contained some slight errors; however, this did not prejudice or prevent the communicant from engaging fully in the process.

2. Although the process did not produce the response sought by the communicant, the communicant engaged extensively in respect of public participation.

3. There is no public participation process for unauthorised development. An application for retrospective planning permission is, however, subject to the same public participation requirements as an ordinary planning application. In the event of an appeal against an enforcement notice issued against unauthorised development, the appeal procedure also provides for public participation.

4. The UK engaged with the communicant at all appropriate times within the process and even exceeded what was required in discharging its statutory duty to understand the concerns and objections of the communicant.

5. The UK's administrative error in failing to provide the development management report promptly did not breach the communicant's right to public participation or the ability to engage fully in the process.

The planning process provides further opportunities to object after the DCOPPR at any point up to the issue of a planning decision.

6. It should be noted that planning application A/2008/0408/F did not concern landfilling. Furthermore, as mentioned above, the RFA's involvement in the process was not "meaningless" and was in fact very significant.

Please provide full details of the actual costs you incurred in bringing the judicial review proceedings to challenge the planning permission granted on 13 September 2012. This should include any court fees paid, lawyers' fees and experts fees relating to the judicial review proceedings. Please be as specific as possible when setting out the actual costs incurred.

7 – 10 & 15. We note that the court fees in a matter such as this cost £400, which is 0.25% of the £165,828.63 incurred by the communicant.

Having delivered its decision to dismiss the communicant's application for judicial review on all grounds, the Court allowed the parties some time to consider the costs position. The parties then exchanged correspondence on the issue and an agreed position was reached that the communicant would make a limited contribution of £6,000 (£5,000 plus VAT) towards the Department's overall costs of £54,363.65.

That sum is consistent with the limit on costs recoverable from an individual in an Aarhus Convention case under regulation 3 of the Cost Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (SI No 81), which came into effect in the period following the hearing of the communicant's High Court claim for judicial review. The Committee is already aware that those Regulations did not apply directly to the communicant's claim and that the communicant had not taken the opportunity available to it when commencing its claim to seek a specific costs protection order.

The costs incurred by the communicant were unnecessary as they are not a requirement of the judicial system. There are several examples of similar matters brought before the courts which have incurred significantly lower costs.

11. All of the grounds of challenge brought by the communicant in the High court were dismissed.

We would be happy to provide further clarification on any points to assist the Committee in its deliberations.

Yours sincerely

Jane Beeko