

# **PREHEN HISTORICAL AND ENVIRONMENTAL SOCIETY**

## **Request for an Inquiry into Transparency, Equality and Accountability of Planning Processes and Ministerial Conduct**

### **Prehen Case Study Summary of events to date June 2012**

Re: Application made by developers to develop housing in Prehen Ancient Woodland area. Application Ref. A/2005/1166/F and also application Ref. A/2010/F.

1. Individuals and groups concerned with the protection of our natural heritage, led by the Prehen Historical and Environmental Society (PHES) submitted objections to the above applications based on Prehen's standing as ancient woodland, home to a range of wildlife including a colony of red squirrels, protected under Article 111 of the Berne Convention, this area had a number of environmental protection designations conferred on it, meaning that the precautionary principle re damaging development should have been invoked. However the development has been approved and natural habitat clearance work has started on this sensitive site. (With no real regard for planning conditions)
2. Approval required the Planning Service to set aside the Derry Area Plan and many associated environmental protection measures and policies, in order to guide the proposal towards approval. The "presumption to approve" was so strong that the Planning Service even negotiated with the developer and on behalf of the developer with Natural Environment & Heritage Service. In spite of the important community asset public interest designations and required DAP 2011 woodland protective buffer zones, it was stated by PS that it was in the "public interest" to allow large high value dwellings to be built in this sensitive area.
3. (NB: the Derry Area Plan allows for a small area zoned for housing. However, because of the requirement for buffer zones at any possible development in this area, the buildable area was reduced to a size that would accommodate only one or two dwellings. This very limited buildable area was allowed to be landlocked by the ancient woodland through mistakes made by the Planning Service and the PAC which allowed a previous developer to use "incorrect density" of the site, thereby taking up more land than anticipated with no access to the rest of the zoned area. This meant that for the applicant to develop the site, he would have to build a heavy duty access route through

the ancient woodland – an intrusion which had not been allowed for in the Area Plan. Environment and Heritage Service suggested finding an alternative access to the site, which would not have been harmful to the woodland. Local residents, and PHES, understood that a small area was zoned, and would have supported two dwellings being built with alternative access as suggested by EHS which would not have been harmful to the ancient woodland habitat and would not contravene the material requirements of the Area Plan).

4. PHES and many other residents and concerned parties continued to submit numerous objections following the appropriate channels.
5. PHES and many other residents and concerned parties have serious concerns and grievances about how objections and submissions were handled by the local planners and also about the handling of the development application. Despite the sensitivity of the site, there was a strong bias towards development. A presumption to approve took precedence over the need for environmental protection. Materially valid objections were given no weight and in fact were dismissed. Indeed the Vice Chair of PHES was told by the then Chief Executive of the Planning Service that irrespective of the *correctness, strength and quality* of submissions or objections, a Planning Officer can decide how much weight to afford those submissions. The most disconcerting statement we have had from the Minister was a confirmation that irrespective of the *correctness, quality and strength* of the various submissions and objections, his Planning Officers could still find against them, and in favour of development at this environmentally sensitive site.
6. As citizens genuinely concerned with protecting the environment, PHES was very much kept at “arms length” and treated as being difficult, whereas the developer was fully engaged with, in order to guide the development towards approval.
7. PHES proceeded to ask the Planning Service for information which should have been publicly available relating to the decision to approve on this site. The answers were not provided by the Local Planning Office. PHES then wrote to the Planning Directorate who sent a letter promising a response within a number of days. This did not happen. No response was ever received, despite several contacts from PHES.
8. PHES was forced to contact the Information Commissioner in 2007 in order to obtain the required information. The Information Commissioner took two and a half years to deal with the case, due to lack of co-operation from the Planning Service. The Planning Service initially refused to give the Information Commissioner the file. When the file was eventually submitted, it was reported by the Information Commissioner to be an unacceptably disorderly file, which made it almost impossible to locate documentation. She reported that she intended to contact the Planning Service to advise them to improve their systems. The Commissioner found that both the Planning Service

and the Planning Directorate had not complied with certain regulations and had been incorrect in their initial responses to PHES. The Information Commissioner then wrote to the Planning Service requiring them to make a response. No response was received within the required number of days. When the Planning Service eventually chose to respond, it was the same incomplete response that had been received before, with none of the required information.

9. PHES then wrote to Minister Attwood in August 2011, and again on 22 August 2011 by email to alert him to the situation, notably, the lack of accountability in the Planning Service, their refusal to supply information, and the flawed nature of the original decision to approve development.
10. PHES met with Minister Attwood on 5 January 2012 taking with them a list of questions for his response. His overall response was that he could not do anything because if he did, the developer would take him to court, and this would be very expensive on the public purse. This seemed to suggest that the democratic process could be held to ransom by the perceived threat of private litigation.
11. PHES subsequently submitted a petition containing 1069 signatures and comments to Minister Attwood on 1 March 2012 asking for an Independent Inquiry into planning practices and decisions especially with regard to the Prehen Ancient Woodland applications. They also asked for the decision to be overturned immediately. Minister Attwood on that occasion informed the group that he was "working on the case". However he again emphasised that there was nothing he could do, as if he did anything, the developer could take him to court. He asked PHES if they would want to be responsible for costing the public purse at such a difficult time. The Minister seemed to suggest that not only could the democratic process be held to ransom by the perceived threat of private litigation, but that he would construe such an outcome as the responsibility of a small voluntary group of people concerned about protecting our environment.
12. PHES has contacted the Minister on a number of occasions since then, including sending him a further 200+ petition signatures, asking him to please respond. They have informed him that the Local Enforcement Officer for the site refuses to meet with PHES. There has been no response whatsoever from the Minister.
13. Mark Durkan MP has remarked publicly in the media this year that the Planning Service have clearly been evasive in this case, and have demonstrated inconsistent use of the Area Plan.

PHES has studied this case in depth, and believe the decision to approve to have been incorrect in the first place. It is therefore democratically unacceptable to have to live with a flawed decision which impacts on a public environmental asset, due to fear of an individual developer taking court action. It is equally unacceptable for a small voluntary group to be

made to feel that they would be to blame for costing the public purse money, simply by doing our duty as citizens and seeking to protect our natural heritage and ensure that democratic and administrative processes are adhered to. PHES also believe that this case illustrates a systemic problem within the Planning Service and its methods of working. Our belief was strengthened by the findings in the recent survey undertaken on behalf of Friends of the Earth by Queens University (Nov 2011) and echoes a view expressed in an Environmental Governance report on the need for an Environmental Protection Agency that the Planning Service and the DOE because of limitations, culture and attitude "were not fit for purpose".

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