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Ireland

Compliance Committee

13 May 2022

Aarhus Convention

Geneva

Switzerland

[aarhus.compliance@un.org](mailto:aarhus.compliance@un.org)

Attention Fiona Marshall

Re BusConnects Core Bus Corridor plans Dublin City, Ireland

Dear Ms Marshall

I wish to make a complaint about the conduct of consultation on the above process.

**Information on Correspondent**

Brendan Heneghan

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Ireland

  
  
**Party Concerned**

Ireland specifically

National Transport Authority

Bus Connects

Dún Scéine

Harcourt Lane

Dublin 2

Ireland

**Facts of the Communication**

The National Transport Authority (NTA) is currently engaged in a process under the title BusConnects Core Bus Corridors to provide sixteen bus corridors in Dublin. These have major environmental implications. Enormous expenditure (€2 billion is often cited) is envisaged in rolling out these sixteen corridors if approved. I believe there is huge merit in the substance of the proposals. However the consultation process has been third rate and I do not believe it complies with the Aarhus Convention. A former Tánaiste (Deputy Prime Minister) Michael McDowell has described it as “a pretence at consultation, in reality local communities have had little or no input into how their localities are affected”.

Recently the NTA has after three supposed consultations lodged a planning application for the first corridor called Clongriffin to City Centre, all documented on a website called clongriffinscheme.ie. It is my core contention that they have reached a decision within the meaning of Article 6 of the Convention to proceed with this particular scheme for Clongriffin, following a very flawed

consultation process not compliant with Article 6. I have spoken informally to some legal people who feel there is no realistic legal path to challenge the decision at this time. While the substance of what is proposed for Clongriffin is a good plan in my opinion, I don't think they should be let go unchallenged on the appalling process.

I am personally concerned with three corridors in my neighbourhood. While my complaint applies to the process for all corridors and particularly Clongriffin as the subject of a decision, I will specify certain facts as they relate to corridor 11 Kimmage to City Centre because I am much more familiar with that. However I have annexed in Annex 4 some observations I have on the Clongriffin process which were also set out by me in a formal planning observation. There is a website [busconnects.ie](http://busconnects.ie) (dropdown Core Bus Corridors) that sets out the detail of each proposal, which is easily accessible by you.

In the case of Kimmage, there were three stages of consultation (all labelled non statutory) following an initial proposal in February 2019

Stage 1 26 Feb 2019 to 31 May 2019 (apparently 644 submissions)

Stage 2 4 March 2020 to 17 April 2020 (apparently 43 submissions)

Stage 3 4 November 2020 to 16 December 2020

It should be noted that Ireland was in the most severe category of Covid "lockdown" from approximately 14 March 2020 to 17 April 2020 and was in lockdown from 4 November 2020 to 16 December 2020.

Each stage entails

A set of written material on the website cited above, frequently difficult to understand.

In Stage 1 only, a public meeting open to all, which in some instances was very heated and non productive.

In each of Stage 1 and 3 a "community forum" which is intended for one or two representatives of a body concerned by the proposal to raise views. These meetings have typically commenced at 6.30-7.00 pm and are scheduled for 90 minutes but typically last about two hours.

Practice has evolved at these meetings where participants are limited to one question and questions are taken in groups of three. At some meetings it is evident there are still a significant number of questions to be raised by others but time has run out.

In the case of some bus corridors, there have been meetings with specific representative bodies, where perhaps four people from a residents group can meet three officials. These are usually facilitated following pressure on elected representatives (councillors and members of the Irish parliament) by well organized groups . There have also been intermediate stages on some corridors with selective participants.

There is in theory a right to e mail in specific questions. I have done so on several occasions. It is highly unusual to receive a reply. I e mailed many questions to NTA on Stage 3. I did not receive a reply. A virtual consultation room for Stage 3 promises a call back on request. I requested a callback on three corridors but did not to my recollection receive any call.

The three stages of the process effectively settle from among a wide range of options, the final scheme for which planning consent will be sought. The decision making is largely complete at that stage and it is merely a matter for a planning authority to decide whether to permit it or not. All of the options which have been inadequately considered cannot effectively be considered at planning application. I would say that as of now this “decision” point has been reached for the Clongriffin corridor and also this week for a corridor Belfield Blackrock to City Centre.

I will explain below why I consider that the process does not comply with the convention. In writing this complaint, I am very much influenced by observation of processes applied in the UK. Some year’s back I signed a petition at a beauty spot near Lanark in Scotland. This related to a relatively minor local development. Since then the Scottish authorities have sent me correspondence outlining every step in the consideration of the matter and a reason why they have or have not taken particular steps. This has manifestly not been the way the Irish authorities approach a project of enormously significant scale.

### **Provisions of the convention with which non compliance is alleged**

I understand that the convention applies to proposed activities which may have a significant effect on the environment (Article 6.1). Ireland has applied this via a number of statutory instruments including SI No 600 of 2001, SI No 394 of 2004, SI no 436 of 2004, SI no 382 of 2008 and SI no 351 of 2010. An environmental impact statement will be required for each corridor.

This project involves inter alia

The removal of a significant number of trees in many parts of the city (in my area the approximate number is 428, likely an underestimate)

The significant intensification of bus traffic on some main roads. For example the number of buses hourly, largely diesel, on Terenure Road East and Rathgar Road in the south city (Rathfarnham corridor no 12), largely residential, will almost double

The diversion of traffic from main roads to smaller residential roads, not intended for through traffic. In my part of the city virtually every main road leading to the city centre will be closed or severely compromised, diverting most traffic to residential roads

The effective blocking to cars of most major arterial routes in the south west and north west city

Requirements for residents to make long detours to reach close by destinations; for example the current Kimmage proposal seems to require a resident of Corrib Road who has a 250 metre car journey to the adjacent KCR crossroad to do a three kilometre detour.

Significant interference with the River Dodder and tributaries, a significant river with extensive wildlife in south Dublin, This included the construction of three bridges in inaccessible locations, a proposal likely to be dropped.

Article 6.2 requires information to be provided on projects “either by public notice or individually as appropriate”. The only persons who have been notified individually are individual property owners whose properties are to be compulsorily acquired. It would seem to me to be “appropriate” that persons who are otherwise severely affected should have got some form of communication.

Article 6.3 requires the public participation to include reasonable time frames

Article 6.3 requires that the procedures allow for the public to prepare and participate effectively during the decision making

Article 6.4 says that “Each Party shall provide for early public participation, when all options are open and effective public participation can take place”

Article 6.6 provides that the public are to be given access for examination, upon request where so required under national law, to all information relevant to the decision making

### **Nature of alleged non compliance**

Article 6.2 I believe that the National Transport Authority could easily have prepared a summary in my area of likely consequences and delivered it to me by usual commercial leaflet delivery methods or by paid post. In my case, my home area is to be severed by the Kimmage corridor from an adjacent shopping centre (Sundrive), the nearest branch of a supermarket, services I use (my dentist) and a number of schools. My nearest main road is likely to be significantly more congested by the Kimmage proposal. We are now almost three and a half years into the process and there is still no information on alternative access routes. I think it is entirely appropriate that my neighbourhood should have been provided with detailed information. In practice very few people are aware of proposals which affect them severely, unless they happen to have a residents association member pursuing the issue.

Article 6.3 I am dubious that six week time frames as given for Stage 2 and Stage 3 of the process were adequate given the complexity of the project. NTA are taking over six months between stages and have taken well over a year between Stage 3 of Clongriffin and the decision to apply for a particular permission, but expect the public to live with six weeks. However with Covid a problem, six weeks was impossible. It was very difficult for residents’ groups to meet. I protested about this in my submission to NTA of 17 April 2020 (see annex 1).

Further in the case of the Kimmage proposal, the changes before Stage 2 were so significant that a much longer consultation was warranted. In practice because there was huge Covid distraction at the time of Stage 2, we should have been given at least three months at Stage 3 to consider a radically different proposal. Significant changes at Stage 2 are a feature of other proposals as well.

Article 6.4 These are enormous projects with significant negative implications for a significant number of people in Dublin. I list in annex 2 areas I am aware of with serious issues. I don't think a single 90 minute meeting with restricted attendees where only a fraction of the questions are addressed amounted to effective public participation. The practice of only allowing one question per participant and taking three together facilitates a selective approach to addressing some only of the questions.

If you were not a registered representative of a residents or other local group, you would have been unable to attend any meetings since Stage 1. For example the only meeting stage 3 meeting proposed on the Kimmage corridor took place on Zoom on Tuesday 10 November 2020 and had up to 90 attendees. Areas clearly badly affected were hardly represented. An area of perhaps 20,000 residents would only have had as a result of the meeting at maximum 90 people who are better informed. Residents who are not familiar with Webinar or Zoom are effectively excluded. I had at my own expense printed a letter for residents in affected areas, see Annex 3.

The documents underpinning Stage 1 show that various routes for corridors were considered. All these options were dropped without explanation before the process formally kicked off. This seems to offend "where all options are open". The documents setting out those options are treated as secondary documents on the website.

In the Kimmage and Rathfarnham (no 12) corridors Stage 1 involved extensive property acquisitions. Property owners objected and therefore in Stage 2, the schemes involved restricting car access to roads. By contrast exactly the reverse happened in the Swords (no 2) corridor proposal. There Stage 1 involved restricting car access to roads to which residents objected. Stage 2 therefore was changed and involved property acquisitions. This is not keeping all options open.

Article 6.6 While this is a less relevant issue, there have been thousands of submissions on these corridors. However these are not available to the public. It is fairly standard in Ireland that if you make a submission on a planning matter or a political boundary review, that document is placed on display on a website. So if I make a submission on my next door neighbour's garage conversion or I make a submission about the constituency in which I live, these documents are put on display. Effectively here you have to proceed under Freedom of Information to extract this type of information from National Transport Authority. It is also the case that the documents are very difficult to understand; little effort has been made to explain them in plain language.

I believe my complaint is in substance that Ireland via a division of the Department of Transport, has generally failed to implement the Convention correctly on this project. In my individual case, I think the fact that I am confined to one question per meeting and that they don't reply to written queries is a breach.

## **Domestic Remedies**

I am a former partner in one of Dublin's leading law firms. I am not however a litigation lawyer. My own legal background and soundings with a number of legal colleagues suggest that the Irish Courts would be reluctant to intervene until a final proposal is reached and the competent planning body, An Bord Pleanála has reached a decision on it. At that point a judicial review may be sought. The poor procedures are likely to form a part of any such case. This process is only now starting with the Clongriffin corridor.

However it would seem far more sensible that the procedure should have been brought into compliance with the convention before a final scheme for each of the sixteen corridors is agreed by the National Transport Authority. It seems to me that you are by far the best placed body to decide whether the process I have described and its many deficiencies comply with the Convention. These deficiencies include

No individual notification to badly affected parties, many of whom are unaware of them

Inadequate time for meetings on very complex proposals

Routinely not replying to queries or indeed requests for a call via a virtual data room.

#### **Other international procedures**

None are relevant

#### **Confidentiality**

I have no issue with this save that "Information on correspondent" above should be redacted, excepting my name. I am concerned about a general tendency by some in this process to label those who express reservation as anti-bus or anti-bike; I am a frequent user of buses.

#### **Supporting documents**

Annex 1 my e mail of 17 April 2020

Annex 2 areas with serious issues

Annex 3 circular letter to affected areas

Annex 4 my comments on Clongriffin Scheme which accompanied a submission to the Planning Board.

Yours Sincerely

Brendan Heneghan