

**EQUALITY COMMISSION FOR NORTHERN IRELAND**  
**STATUTORY DUTY INVESTIGATIONS COMMITTEE**  
**FINAL REPORT OF COMMISSION INVESTIGATION UNDER**  
**PARAGRAPH 10 OF SCHEDULE 9 OF THE NORTHERN IRELAND**  
**ACT 1998**

**Tony McGuinness**  
**&**  
**Department of Environment (The Planning Service)**

**INTRODUCTION**

This complaint refers to the Planning Service, an executive agency within the Department of Environment (DOE) and its equality proofing of Planning Policy Statement 1 (PPS1). The complainant has stated his view that in operating PPS1, the Planning Service is failing to comply with sections 1.4, 2.8, 2.9-3.5, 3.10 and 3.11 of the DOE's approved Equality Scheme.

At its meeting on 1<sup>st</sup> February 2008, the Statutory Duty Investigations Committee decided to authorise investigation into this complaint under the following heads;

1. Was PPS1 screened?
2. Was any such screening conducted properly and in accordance with the screening criteria?
3. If the policy was not screened, should screening have identified PPS1 as a policy that had sufficient implications from an equality of opportunity perspective to require it to be subject to an equality impact assessment?
4. If PPS1 was actively screened out, was it reasonable to conclude that this policy did not have sufficient implications from an equality of opportunity perspective to not require an equality impact assessment?

## **BACKGROUND TO THE COMPLAINT**

The complainant, Mr Tony McGuinness, is a resident of the Holylands area of South Belfast. His complaint arises from his belief that the Planning Service consistently applied the provisions of PPS1 despite the fact that, in his view, it blatantly favoured developers. He alleges that in exercising this policy, the Planning Service is failing to comply with the provisions of DOE's approved Equality Scheme.

The complainant states that as a result of the failures to comply with scheme that he alleges, what was once a peaceful community has now been transformed into a "transient and unsustainable district" due to the mass conversion of properties from single family dwellings to houses in multiple occupancy (HMOs). The complainant feels that this has destroyed any sense of community spirit or civic pride in the area and that as an older person, he regularly suffers physical or verbal abuse and sleep deprivation due to disturbances in the area late at night, as well as vandalism carried out by the younger persons coming into the area . The complainant alleges that an overly permissive approach in PPS1 has allowed this state of affairs to arise by allowing developers to purchase properties in the buy-to-let market and modifying them to accommodate as many students as possible. He has stated how the problem is self perpetuating as residents become increasingly frustrated with the situation and move out or else die in occupancy, and the reputation the area has obtained means that virtually only property developers are interested in purchasing property there.

The complainant has explained at length the anti-social behaviour he regularly encounters in the Holylands area. He has been active on behalf of the local community in pressing the Planning Service to answer whether or not PPS1 was screened and if so, whether it was subject to equality impact assessment.

## **PLANNING SERVICE'S POSITION**

Commission staff met with officials from both the Planning Service and the DOE Equality Unit on 13<sup>th</sup> March 2008 to discuss the terms of investigation agreed upon by the Statutory Duty Investigations Committee. The Commission subsequently received papers from the DOE Equality Unit on 12<sup>th</sup> May 2008 providing greater detail on the screening applied to PPS1.

Each head of investigation is dealt with below, outlining the Planning Service /DOE response.

### **1. Was PPS 1 screened?**

When investigation of this matter was authorised it was unclear whether PPS1 had been considered then actively screened out, or whether it simply had been overlooked or ignored by DOE when the original screening of all existing policies was taking place.

At the meeting of 13<sup>th</sup> March 2008, DOE confirmed that all planning policy statements that were in existence when its Equality Scheme was being developed were assessed together as a policy area for screening purposes, using separate summaries of each individual PPS, allowing consideration of developmental control, planning policy and development plans. DOE advised that the screening exercise that took place on existing policies at the time the Equality Scheme was being approved was carried out through informal meetings and there were no official screening forms. DOE did, however, confirm that this screening exercise did apply the four screening criteria, as set out in the Guide to the Statutory Duties and DOE's approved Equality Scheme, to the general policy area. This generated positive responses to all four screening questions. DOE explained that it next considered each individual PPS against each of the nine Section 75 categories of person and as a result, it decided that PPS 3 (Developmental Control – Roads Situation) and PPS 8 (Open Space, Sport and Recreation) should be "screened in" for fuller analysis by way of an equality impact assessment due to the fact that these two particular PPSs were judged to have the greatest potential adverse impact in terms of disability and age. DOE confirmed its belief that

although planning policies as an area gained four positive responses according to Table A in Section 3 of their approved Equality Scheme, it is perfectly conceivable that individual PPSs would all have been assessed differently had the screening criteria been applied to each of them individually.

The decision to screen out PPS1 is apparent from DOE's approved Equality Scheme, consulted upon and approved by the Commission on 8<sup>th</sup> February 2001, in that the equality impact assessment timetable included in that scheme only identifies PPS 3 and 8 as requiring equality impact assessment.

Included in the papers subsequently sent to the Commission on 12 May 2008 is a note of a meeting of the DOE Assembly Committee dated 15<sup>th</sup> June 2001. Within these notes, DOE state that they considered all their policies and functions systematically against the four screening criteria in order to identify those that had a significant impact upon equality of opportunity. DOE state that generally speaking, the area that had shown itself to have the greatest significance for equality of opportunity was that of planning. DOE states that planning issues could potentially have impacts for any of the nine Section 75 groups, and that this was reflected by the "substantial" programme of impact assessments covering, inter alia, relevant PPSs. Appended to this was a document that was circulated amongst consultees that discussed the re-screening of policies that were "screened out" of the approved Equality Scheme EQIA timetable. This document correctly identifies the four screening criteria as stated in official ECNI guidance, and correctly states that if any positive responses are generated then consideration must be given to whether or not the policy should be subject to equality impact assessment. The document further states that Annex A thereto constitutes a list of policies that were screened out following application of the screening criteria and Annex B provides a explanation of each policy and the reasons for screening it out. Annex A states that Planning Policy Statements had been screened out. Annex B elaborates on the area of PPSs and explains in general terms what Planning Policy Statements are before describing each of the eleven PPSs (at the time seven were published in final form and four had been published as consultation drafts) individually. PPS1 is described as follows;

*“PPS 1 General Principles”.*

*“This PPS sets out the general principles that the Department observes in formulating planning policies, making Development Plans and exercising control of development. The Statement also sets out the key themes that underlie the Department’s overall approach to planning across the whole range of land use topics.”*

The document goes on to explain what is involved in each individual PPS and states that, following the application of the four screening criteria, it was concluded that equality impact assessments were not required for PPSs 1-7 or 9-11 (PPS 3 had been dropped from the EQIA timetable at this point as a result of re-screening).

DOE also provided a minute of an Equality Re-screening Public Consultation Seminar that took place on 19<sup>th</sup> September 2001 which was attended by representatives from DOE, Disability Action and the Equality Commission. It is stated that at the outset of the meeting DOE outlined that the purpose of the seminar was to, “allow those present a further opportunity to comment on and question the decisions taken by the Department to screen out and exclude certain policies and functions from the equality impact assessment programme.” In section 3 of the minutes to this meeting a DOE representative states that the four screening criteria were applied to PPS1 and that it had been concluded that an equality impact assessment was not required.

DOE has also provided a document entitled, “Equality Scheme: Re-screening of policies and functions” dated 14<sup>th</sup> January 2002. This document outlines how DOE carried out an initial screening of all existing policies. However a further re-screening exercise was also carried out on all policies that were originally screened out. This document contained responses to the consultation on re-screening and any relevant Departmental actions or recommendations. A response was received from Disability Action in which they stated that, in light of the duty to promote equality of opportunity, PPSs should have access issues fully mainstreamed into these policies. DOE responded that all PPSs were screened against the

requirements of Section 75 and an equality impact assessment will be prepared where there is evidence of differential impact. It therefore follows that if PPS1 was not equality impact assessed, DOE had concluded that no differential impacts would flow from the operation of PPS1.

A further response was received from the Traveller Movement (NI) which stated that the Planning Policy Statements had potential for adverse impact and should therefore have been considered for equality impact assessment. DOE's responded that some PPSs had already been screened out and that justification had been accordingly provided. More pertinently, the Traveller Movement (NI) goes on to specifically mention PPS1 and contends that PPS1 should have been equality impact assessed given its "fundamental influence on the formulation of planning policy". DOE's respond that PPS 1 was "largely procedural in nature" and that they were "unable to identify any potential for adverse impacts on any group".

## **2. Was the screening conducted properly and in accordance with the screening criteria?**

In the course of this investigation, DOE & Planning Service officials have indicated that:

- All existing PPS's were initially considered together as a single policy area for screening purposes.
- The 4 required screening criteria were applied.
- Application of these criteria produced 4 affirmative responses
- In light of same, consideration was given to whether an EQIA was required. It was decided that 2 particular PPS's should be subject to Equality Impact Assessment (ie 3 and 8). PPS1 was considered inappropriate for Equality Impact Assessment. No contemporaneous record is available to explain this decision, but DOE/PS officials contended that PPS1 is largely procedural in nature, did not have potential to create adverse impacts, and therefore did not require an EQIA.

**3. If this policy was not screened, should screening have identified PPS 1 as a policy that had sufficient implications from an equality of opportunity perspective to require it to be subject to an equality impact assessment?**

It seems clear that PPS 1 was screened out, as opposed to not being screened at all.

**4. If PPS 1 was actively screened out, was it reasonable to conclude that this policy did not have sufficient implications from an equality of opportunity perspective to not require an equality impact assessment?**

DOE briefly explained the rationale for its decision not to subject PPS 1 to an equality impact assessment at the meeting with Commission representatives on 13<sup>th</sup> March 2008. They stated that PPS 1 was largely procedural in nature and served as a broad framework in which other PPSs could operate, and therefore was not suitable for equality impact assessment. This is corroborated by DOE's response to comments raised by the Traveller Movement (NI) in relation to the DOE document entitled "Equality Scheme: Re-screening Of Policies And Functions" dated 14<sup>th</sup> January 2002, in which DOE, when asked why PPS1 was not screened, state that it was because of its overarching procedural nature and that it was therefore unsuitable for equality impact assessment.

DOE asserted that whilst they were aware of the issues that the complainant was raising, they were in no way related to PPS1, nor had DOE any power to restrict the development that took place. DOE stated that the type of development that Mr McGuinness is complaining of did not require planning permission until 2004 with the introduction of the Planning (Use Classes) Order (Northern Ireland) 2004; prior to the introduction of this legislation the use of a dwelling house to accommodate a number of students was not deemed to constitute development and was therefore beyond planning control. Planning permission was required only when a dwelling house was to

be divided into separate flats, e.g., a three storey house separated into three flats, one on each floor, each constituting a separate address. However, DOE representatives stated that the majority of properties occupied within the “Holylands” area are actually single self-contained dwelling houses containing a number of students (also known as houses in multiple occupancy (HMOs)), each with their own bedroom but sharing all communal areas. DOE representatives pointed out that this was beyond planning control until the 2004 legislation was enacted, and indeed the purpose of the legislation was to address the fact that developers were significantly changing the nature of selected areas by purchasing many properties and then letting out individual rooms to tenants.

DOE representatives emphasised that it was only since 2004 that it had been necessary to obtain planning permission for HMOs, defined as two or more people from different families living together at one dwelling house. Prior to this, the practice of property developers renovating houses and moving in multiple numbers of students fell outside the remit of the Planning Service. DOE stated that when the abovementioned legislation was enacted, it realised that it would become necessary to adopt a strategy to manage the continuing development of HMOs. Consequently DOE formulated the Houses in Multiple Occupation (HMOs) Subject Plan for the Belfast City Council Area 2015. This plan has itself been subject to formal screening, which concluded that the Plan did have sufficient equality implications to require a full equality impact assessment to be carried out. The plan proposes capping further development of HMO’s in South Belfast.

A Notice of Intention to prepare the Plan was published in the local and regional press in June 2005, with comments invited from the public. Pre-consultation meetings were carried out with Belfast City Council, Government departments and agencies and other bodies. The representations received were taken into account in preparing an Issues Paper and the Subject Plan.

DOE published the Issues Paper relating to HMOs on 15<sup>th</sup> August 2005 to assist the consultation process, which lasted for fourteen weeks. DOE produced a summary of the Issues Paper and the responses received, and these were discussed at a series of public

meetings between October and December 2005. On 27<sup>th</sup> June 2006, a draft equality impact assessment into the HMO Subject Plan was issued for public consultation. DOE advised that public consultation on the draft equality impact assessment is now complete and that the final equality impact assessment and Adopted Plan will be issued in due course.

The DOE representatives emphasised that it had no control over matters that were not governed by PPSs or legislation. It stated that the vast majority of use changes in areas such as the “Holylands” had occurred prior to 2004, and therefore had not required planning permission. DOE advised that the 2004 legislation created the HMO and defined it as a dwelling house occupied by two or more persons from different families. It was stated that the 2004 legislation was unveiled at the same time as Belfast Metropolitan Area Plan. This was described as a document that raised local issues and created localised policies. DOE advised that in considering any proposed development in the Belfast area, Paragraph 59 of PPS 1 had to be read in light of the Belfast Metropolitan Area Plan.

The EQIA consultation paper of June 2007 sets out the aim of the Houses in Multiple Occupation Subject Plan for the Belfast City Council Area 2015 as follows;

*“The overall aim of the Plan is to provide a planning framework for HMO development which is in general conformity with the Regional Development Strategy (which provides an overarching framework for planning policy and the preparation of development plans aimed at achieving a more sustainable pattern of development) in facilitating sustainable growth and a high quality of development in the Plan Area throughout the Plan period, whilst protecting and where appropriate, enhancing the natural and man-made environment.”*

The strategy outlined in this EQIA consultation paper seeks to protect the amenity of areas where multiple accommodation is, or is likely to become concentrated whilst accommodating the need and demand for multiple accommodation. The strategy seeks to do this by focussing HMO development in areas where it can contribute to

regeneration as well as promoting appropriate development of purpose built student accommodation. The strategy is subdivided into nine separate HMO policy areas. Viewed overall, the policy areas outlined within the EQIA appear to address the concerns that the complainant has raised regarding a preponderance of HMOs in particular areas, whilst recognising that there is a growing market for HMOs and the need for that demand to be catered for in a manner that will cause the least disruption possible.

Although DOE has not yet issued the final equality impact assessment and the Adopted HMO Subject Plan, the general tenor of the draft equality impact assessment indicates that it recognises the issues that have arisen due to the lack of restriction on HMO Development within HMO Policy Areas and is looking for innovative solutions to preserve and enhance the amenity of the HMO Policy Areas, whilst acknowledging the requirement for HMO accommodation and attempting to focus such development in areas in need of regeneration.

## **CONCLUSION**

DOE has adduced evidence that a screening exercise was carried out in relation to PPS 1, and that it was screened out for further analysis by way of an EQIA. That screening exercise was carried out prior to equality scheme approval and no documentary evidence exists to assist in considering the adequacy of the screening exercise and the justification offered to not subject PPS 1 to an equality impact assessment.

It was apparent from the DOE's draft equality scheme, and the approved version adopted in 2001, that PPS1 was not to be subject to an equality Impact assessment. DOE also subsequently carried out a re-screening exercise, which identified the policies that had been screened out for further public consultation.

In terms of whether it was reasonable to conclude that PPS1 did not have sufficient equality implications to require an equality impact assessment, DOE has indicated that PPS 1 was largely procedural in nature and served as a broad framework in which other PPSs could

operate, and therefore was not suitable for equality impact assessment. The Guide to the Statutory Duties requires that, where application of the screening criteria produce positive responses, as in the instant case, public authorities must “consider” whether an EQIA should be conducted. The issue is, therefore, can the equality impact assessment of a policy be a requirement if this procedure need only be “considered”? The Commission has previously considered this question in the context of its investigation of *CLC & NIO*, and concluded that, in appropriate circumstances, an equality impact assessment would be required. The Commission’s Investigatory role is to evaluate whether, in deciding not to proceed to EQIA, this decision was in itself so unreasonable or ill-founded so as to constitute a failure to comply with approved equality scheme. Having considered the evidence in respect of PPS1, the Commission has concluded that this is not an appropriate case to conclude that the “screening out” of this policy constituted a failure to comply with approved Equality Scheme.

In the context of the specific allegation that inadequate equality proofing of PPS1 has had a detrimental impact on the nature of the “Holylands” area, it is also legitimate to query whether the state of affairs as described by the complainant has come about as a result of the Planning Service’s alleged failure to comply with the DOE approved Equality Scheme. The evidence obtained by this investigation indicates that, even if PPS1 had been subject to an equality impact assessment, this would have had no impact on the issues raised by the complainant as the developments that have been a source of concern to him would not have been precluded by the legislation then in force.

DOE also state that PPS1 was not responsible for the matters raised by the complainant, and that when legislation was passed in 2004 requiring HMO’s to obtain planning permission, it has developed plans in respect of same which have been properly screened, which have concluded that a full Equality Impact Assessment needs to be carried out.

## **FINDING**

The Commission has concluded that a failure to comply with the Department of Environment's equality scheme has not been established.