



**Oifig an Ombudsman
Office of the Ombudsman**

Our Reference : L59/07/2343
4 December 2007

Mr. Abe Jacob
Ombudsman Liaison Officer
Corporate Services
South Dublin County Council
County Hall
Town Centre
Tallaght
Dublin 24

Dear Mr. Jacob

Ms. Angela O'Donoghue, Glendoher & District Residents Association, c/o 17, Glendoher Close, Rathfarnham, Dublin 16 has contacted the Ombudsman about an alleged failure by South Dublin County Council to adhere to the provisions of the Part 8 planning process which, she says, is in contravention of Section 179 of the Planning & Development Act, 2000.

In her submission to the Ombudsman Ms. O'Donoghue states that there is a conditioned open space at Kingston Court on which the Council proposes to build residential units. She alleges that under the Part 8 process the Council has failed to address the fact that the conditioned open space exists. She has also listed the following concerns regarding the Part 8 process which, she alleges, have not been taken into account in the process :

(a) Submission by Hendrik Van Der Kemp

This submission was made on behalf of the Ballyboden & District Group of Residents Associations of which there are 14 residents associations represented. In his Report the Manager only refers to a single submission by Mr. Van Der Kemp which is not truly representative of the particular objectors, i.e, those represented by the 14 residents' associations. Ms. O'Donoghue had raised this matter by e-mail to Hugh Hogan in the Council on 13 November 2007 and also forwarded it on to Cllr. John Lahart. That afternoon at the TRAC 2 meeting (Terenure Rathmines Area Committee - Housing and Parks) Cllr. Lahart raised the matter with Mr. Hogan that the submission had been incorrectly labelled as being from Mr. Van Der Kemp. Mr. Hogan indicated to the Councillors at the meeting that he had received specific instructions to acknowledge receipt of the submission as being from Mr.

Van Der Kemp alone. Ms. O'Donoghue disputes this and asserts that while it was to be receipted to Mr. Van Der Kemp it was to be regarded as a submission from the Ballyboden & Districts Group Residents Associations. The Manager's report does not attempt to correct this. In her view the Manager's Report should show that there were widespread objections to the plans, whereas, according to the report, the Glendoher Estate appears to be dominant in its opposition to the plans. Ms. O'Donoghue subsequently complained to the Manager who acknowledged receipt of her letter but to date he has not responded to the substantive issue.

(b) Palmer Park & Pearse Parks Resident Association, Kingston Court Residents Association

While individual submissions from residents in those areas are referred to by the Manager in his Report, reference is not made to the submissions made specifically by the Residents Associations. This was taken up with the Manager at the TRAC meeting mentioned above and Ms. O'Donoghue alleges that it was accepted that the submissions had been mislaid. However, this is not referred to in his Report by the Manager

(c) A copy of her own personal submission

Ms. O'Donoghue made a personal submission which is not accounted for by the Manager in his report. In this regard it MAY or MAY NOT be included in the Mass Template submission but she cannot be sure of this.

(d) Protected structure

Ms. O'Donoghue confirmed that Newbrook House (privately owned which she understands the owner wishes to develop in the future) and the boundary wall of the House would become the rear garden boundary of the proposed houses in the Part 8 process. She asserts that it is standard procedure to refer to protected structures in any Part 8 process and also to notify relevant agencies such as, *inter alia*, An Taisce and the Industrial Heritage Association of Ireland (IHAI). In this regard she said that in a private development affecting another protected structure, Bolton Hall, the correct procedure was followed by the Manager. Both these protected structures are connected by a right-of-way and both are in close proximity to the river and hedgerows. This area is recognised as a valuable ecological site. The Manager notified all the relevant listed bodies in the regulations in the Bolton Hall case, and went one step further by contacting the Irish Wildlife Trust, which is not a prescribed body under the regulations. During the planning process the Manager/Council consistently recognised the importance of the river, hedgerows and the affect on wildlife in the case of Bolton Hall which is in stark contrast to the position the Manager has adopted in the case of Newbrook House. The Bolton Hall planning process is ongoing and the residents associations in the area have objected to the development which is with An Bórd Pleanála.

(e) Mass Template submission (by e-mail, post and fax).

Ms. O'Donoghue claims that the Manager is bound by the provisions of S. 179 of the Act to identify and list all of the names of the individuals. It would appear from the Manager's report that it could be assumed that all the mass templates were the same. However, she is aware of a number of residents who amended the template to suit their own individual views. One example is Mr. James Doran of 15, Glendoher Drive and she says that there are many others who made amendments. She also asks the question, "Where is my objection?"

(f) The Manager's Report does not indicate that any prescribed body was notified of the proposed development.

While An Taisce (prescribed) and the Irish Wildlife Trust (not subscribed) are listed as bodies having made submissions, Ms. O'Donoghue said that it was **she**, not the Manager/Council, who contacted those bodies. She said that there is a long list of prescribed bodies in the regulations (not all of which were relevant to this particular case). She felt that at least the following bodies should have been notified by the Manager concerning the proposed development :

- Eastern Regional Fisheries Board
- An Taisce (contacted by herself not the Manager)
- Bórd Fáilte
- The Heritage Council
- Industrial Heritage Association of Ireland
- Irish Wildlife Trust (contacted by her and not the Manager)

No attempt was made by the Manager to contact/notify any of the prescribed bodies or any bodies which might have an interest in the development.

(g) Summaries of submissions received

The Manager only refers to the fact that submissions were received. There is no attempt made to summarise the submissions. All that was done was the Manager outlined his own position with regard to the different headings in the report and made no attempt to summarise the submissions made by individuals and various residents' associations and other interested parties which is contrary the provisions in S. 179 of the Planning and Development Acts.

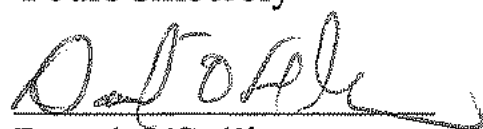
(h) Manager's comments regarding consultation and discussion and his assertion that amendments have been made to the Report.

Despite what the Manager states, Ms. O'Donoghue alleges that there have been no changes/amendments to his Report. It is simply a "cut and paste" taken from the original Project Report which was the report that was publicly advertised at the start of the Process. Ms. O'Donoghue went on to refer to the Manager's final comment in his Report *"As the proposed development as amended in the foregoing report and now comprising the construction of 9 dwellings is in accordance with the proper planning and sustainable development of the area, it is proposed to proceed with the development as amended."* Ms. O'Donoghue contends that no amendments have been made to what was originally advertised.

(i) A Local Area Plan is referred to in the Manager's Report. However, Ms. O'Donoghue says that no such Plan exists. She says that there is a Specific Local Objective plan (SLO 93) but that is a completely different statutory entity to that of a Local Area Plan. She goes on to say that this SLO 93 has not been finalised and it is due to be reviewed. She asserts that if the Councillors were to accept the Manager's Report it would raise serious legal implications for the Council.

I would appreciate if you could provide me with an urgent report on the matters raised by Ms. O'Donoghue.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Donal O'Sullivan', with a long horizontal flourish extending to the right.

Donal O'Sullivan
Investigator