

Response to Belfast City Council consultation

‘Reconnecting Open Spaces – consultation on designs (Ballygomartin to Springfield Road)’

24 October 2019

Participation and the Practice of Rights
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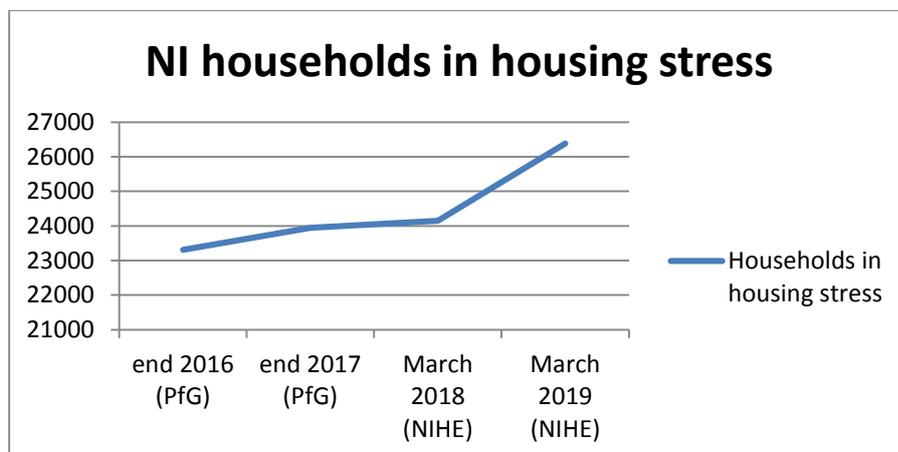
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Who we are: Participation and the Practice of Rights (PPR) supports marginalised people to assert their human rights in practical ways to achieve real changes in their lives. Equality Can't Wait - BUILD HOMES NOW is a campaign led by families experiencing homelessness and housing stress. The campaign has secured cross party political support and interventions from international and domestic human rights bodies calling on government and public authorities to take action to tackle long standing inequality in housing provision. Families have mapped out available land in Belfast and are monitoring the actions of state duty bearers responsible for the development of social housing, particularly at the few remaining sites -- including Glenmonagh, Hillview, Mackies, The Gasworks, Sirocco and Belfast Harbour - large enough to make a difference for the thousands of families waiting for homes.

1. THE CONTEXT SURROUNDING THE BELFAST CITY COUNCIL PLAN FOR THE FORMER MACKIES SITE

A. Social housing provision, inequality and objective need

The Belfast City Council consultation is not taking place in a vacuum, but rather in a context of severe and growing housing stress affecting more and more of the most vulnerable people in our society. Official NI figures for housing stress as shown here:



Concerns about failures to provide social housing, and Section 75 (1) NI Act (1998) inequalities in relation to the provision of social housing, have been expressed by the NI Equality Commission¹, the NI Commissioner for Children and Young People² and the NI Human Rights Commission³. Even professional bodies such as the Chartered Institute of

¹ <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/HousingCommunities-KeyInequalitiesStatement.pdf>, para. 6.1; also <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/HousingCommunities-KeyInequalitiesStatement.pdf>, para. 1.9

² <https://www.niccy.org/about-us/news/latest-news/2015/september/10/commissioner-calls-for-urgent-action-on-belfast-housing-crisis/>

³ http://www.nihrc.org/uploads/publications/NIHRC_Parallel_ICESCR_Report_2015.pdf paras. 17.1-17.12.5

Housing NI, as recently as November 2018, have publicly recognised that “we are facing record levels of housing stress”⁴.

In recognition of the reality shown in graph form above, Northern Ireland’s Programme for Government (PfG) explicitly makes **reducing the number of households in housing stress** (defined by the NI Housing Executive as households on the social housing waiting list with over 30 points) a key measure of performance against its indicators⁵.

As shown above, at end March 2018, there were 36,198 households on the social housing waiting list across NI⁶ (with some 10,136 of them in Belfast Local Government District⁷). According to Housing Executive figures, by end March 2019 that figure had increased to 37,859 households on the social housing waiting list. Of those, 26,387 – basically **seven out of ten** -- were considered to be in housing stress, and **over half** -- 19,629 households in total -- were deemed Full Duty Applicant homeless.

Inequality in social housing provision

The Housing Executive calculates the shortfall between households living in housing stress and average annual allocations as a measure of housing need in any given area⁸. At end March 2018, for West Belfast’s ‘Housing Need Assessment (HNA)’ areas as a whole, the Housing Executive reported this ‘residual need’ to be at 2,231 homes – the highest in Belfast, and one of the very highest levels in any of the eleven council areas.

⁴ CIH, Rethinking Social Housing NI (14 Nov 2018) at

<http://www.cih.org/resources/PDF/NI%20policy%20docs/RSH%20NI%20summary%20report.pdf>, p. 4.

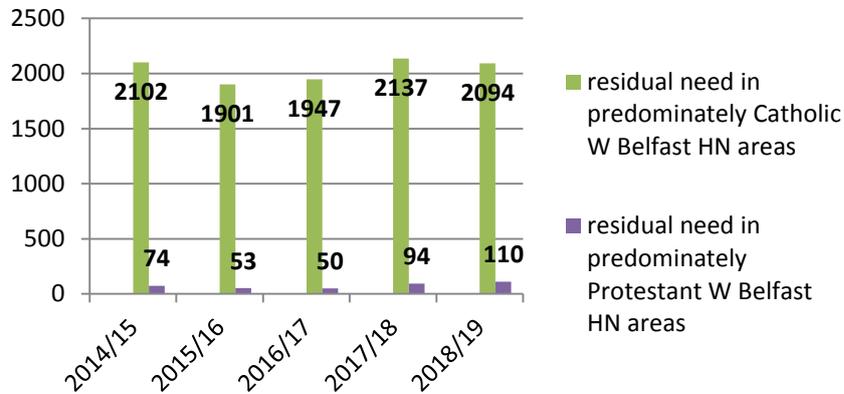
⁵ <https://www.northernireland.gov.uk/sites/default/files/consultations/newnigov/draft-pfg-framework-2016-21.pdf>, pp. 13-14.

⁶ https://touch.nihe.gov.uk/waiting_lists

⁷ <https://www.northernireland.gov.uk/publications/northern-ireland-housing-statistics-2017-18> p. 5. Also NI Housing Statistics 2017-18 section 3 tables at <https://www.northernireland.gov.uk/publications/northern-ireland-housing-statistics-2017-18> (table 6)

⁸ https://touch.nihe.gov.uk/review_of_housing_need_assessment_formula_for_the_northern_ireland_housing_executive_published_november_2010_.pdf

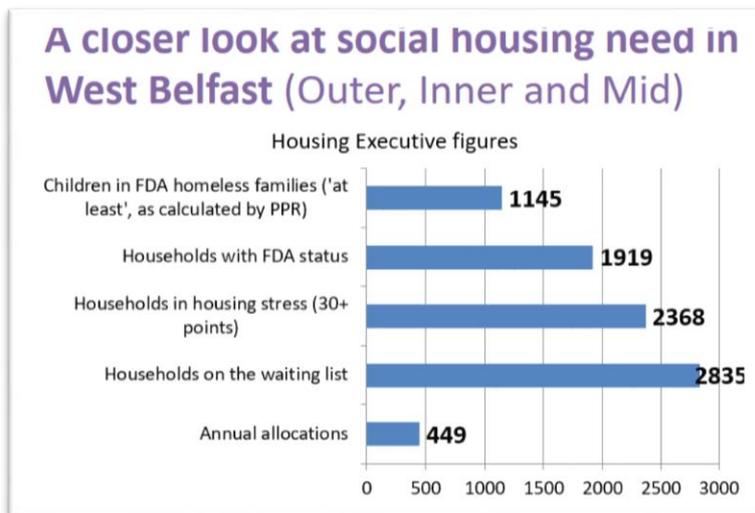
Evidence of religious inequality: disparities in residual need (NIHE figures)



As shown above, an overwhelming 95.8% of that residual need -- 2,137 homes⁹ -- was in the three predominately Catholic areas of Inner West Belfast, Mid West Belfast and Outer West Belfast, along with

- 2,835 households on the waiting list for social housing
- 2,368 households in housing stress
- 1,919 households officially recognised as homeless (Full Duty Applicant)¹⁰.

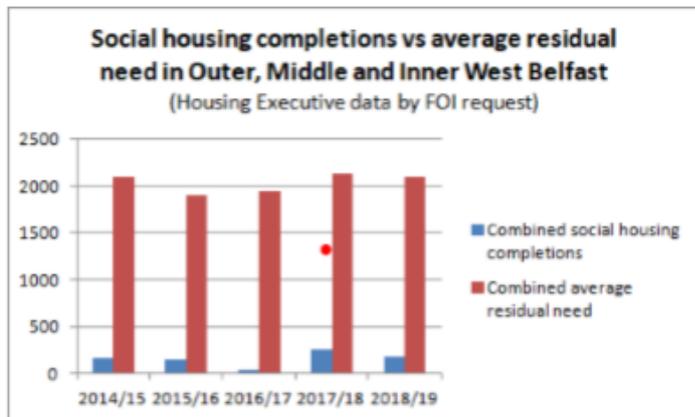
Shown graphically, those figures look like this:



⁹ Inter alia, Housing Executive response EN/FOI/2018/22 (PPR-8) to PPR Freedom of Information request.

¹⁰ Housing Executive response EN/FOI/2018/20 to PPR Freedom of Information request.

These high levels of housing stress and homelessness are the result of housing policy that has persistently failed to come close to meeting need. Over the years, figures on new build social housing completions have been dwarfed by ongoing need:



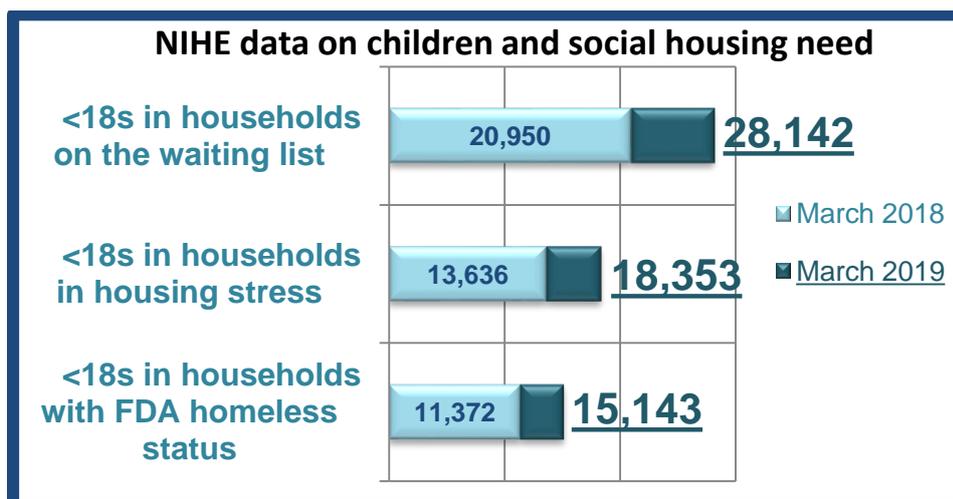
The human cost of this failure to meet people’s right to adequate housing is acute, with vulnerable people spending years without the security of a stable place to live. While they wait for a suitable home, families endure stressful circumstances and unhealthy living conditions that have long-term impacts. Land that could help break this cycle of harm -- already owned and controlled by the Department for Communities, the public body with the explicit duty to provide housing and address inequality and disadvantage¹¹ – has been slated for transfer to Belfast City Council. The Council’s consultation documentation, such as it is, appears to indicate that the Council plans to use the whole of the 25-acre site for **purposes other than housing those who are most disadvantaged and most in need**, in breach of its obligations under sections 28(e) and 75 of the NI Act (1998).

Children and denial of the right to adequate housing

Of particular concern in these households are children under the age of 18, whose long-term health can be permanently affected by stressors experienced during their early developmental years¹². Their numbers are growing, as shown below:

¹¹ <https://www.communities-ni.gov.uk/about-department-communities>

¹² See inter alia, The Health Foundation at https://www.health.org.uk/publications/allostatic-load?gclid=EAlalQobChMIsoPt_qjI5AIVBrTtCh3hPg68EAAYASAAEgLb0vD_BwE



Belfast City Council’s plan for the former Mackies site is situated in this context of growing child homelessness. Amongst the 1,919 full duty applicant homeless households in the three high-need, predominately Catholic HNA areas of West Belfast, there were **at least 1,145 homeless children** under the age of 18¹³.

In human rights terms, these children’s internationally-recognised rights to the highest attainable standard of health and to develop to their full potential are jeopardised by the denial of their right to a stable, safe home. Belfast City Council’s ‘Open Spaces Strategy’ aim of improving the health and wellbeing of the city’s residents, workers and visitors through open spaces and opportunities for play and leisure cannot be achieved when thousands of local people – including over one thousand local children in West Belfast -- do not have homes to sleep in at night.

B. Timeline of the former Mackies site

The James Mackie & Sons factory closed in **1999**. A small part of the site was acquired by Invest NI, part of the Department for the Economy, but the lion’s share of the site is vacant land owned by the Department for Communities (DFC). As noted above the DFC is the government body responsible for “the provision of decent, affordable, sustainable homes and housing support services” and “addressing inequality and disadvantage”¹⁴, as obligated and empowered under Section 75 of the NI Act (1998) and the St Andrew’s Agreement (2008).

In **April 2015** the former Mackies site was identified in an Equality Can’t Wait photomapping exercise¹⁵ as one of the few remaining areas of vacant land large enough to make a difference to the growing numbers of homeless families and other families in housing stress in West Belfast. In **December 2015** families, accompanied by elected representatives of five

¹³ Housing Executive response EN/FOI/2018/20 to PPR Freedom of Information request.

¹⁴ <https://www.communities-ni.gov.uk/about-department-communities>

¹⁵ <https://www.pprproject.org/equality-can't-wait-ecw-we've-found-the-land-now-build-the-homes>

parties (SDLP, Sinn Féin, People Before Profit, Green Party and Alliance), held a Christmas vigil at the former Mackies site and called for local social housing for West Belfast families in need¹⁶. Families' efforts for social housing at Mackies have continued ever since¹⁷; however the support shown by Councillors and MLAs with democratic mandates has not translated into appropriate actions by public officials with responsibility for implementing law and policy.

In **January 2018** Belfast City Council's Peace IV launch booklet described its plans for "a 13 km network of cycling and walking pathways" comprising "sites that are affected by segregation which are close to interfaces with the aim of creating new shared spaces, improving linkages, relationships and connectivity between the various areas." No mention whatsoever was made of the extremely high concentration of housing need impacting the Catholic community surrounding the area, nor the obligation of the Council under section 75(1) of the NI Act (1998) to pay due regard to the need to promote equality when considering using its powers in relation to this site.

According to Belfast City Council documentation obtained through Freedom of Information, the site initially proposed for this section of the route was **Woodvale Park** rather than the former Mackies site. At some point a change was made and the route was then "**altered in favour of through the DFC/Invest NI land**"¹⁸. The reasons given for the change in the documentation included that the DFC land were "less identified as belonging to one community" (as opposed to "Woodvale Park strongly identified with one community") and "InvestNI land offers more opportunities for further connections"¹⁹. It is unclear what if any public scrutiny there was of this decision-making process, particularly in light of the fact (described more fully below) that Mackies, as a brownfield site, does not appear to meet the Council definition of 'open space' that underpins the strategy / route as a whole.

In **October 2018** DFC confirmed to PPR that it owned the 25-acre U-shaped site around the Invest NI property, and said it had been "approached by Belfast City Council" regarding a shared civic space project with Peace IV funding on the site, but that it had "not yet been presented with any detailed plans"²⁰.

In **December 2018**, following meetings with homeless children from the #BuildHomesNow campaign in which the Mackies site was one of the potential sites raised for social housing, Belfast City Councillors unanimously passed a motion stating:

The Council recognises that we are in the midst of a housing and homelessness crisis.

¹⁶ <https://www.pprproject.org/equality-cant-wait-time-to-build>

¹⁷ See for instance 2019 children's video at <https://www.youtube.com/watch?v=Sj2wMoy4LQo>.

¹⁸ Belfast City Council, Peace IV Technical Feasibility Study, Sept 2018 p. 29.

¹⁹ Ibid.

²⁰ Freedom of Information response from the DFC, reference EIR/DFC/2018-0233, 2 October 2018.

The Council recognises the impact of homelessness on the children of Belfast. Recent figures from the Housing Executive show that there are at least 20,950 children on the housing waiting list in total. At least 13,636 of these children are said to be in 'housing stress' and at least 11,372 are full duty housing applicants. On three separate occasions in the last 10 years, the United Nations has intervened, urging the Westminster Government and the devolved Stormont Executive to intensify their efforts to address and overcome persistent religious inequalities in social housing.

The Council calls upon the Department for Communities and the Northern Ireland Housing Executive to work with the Council to use all available powers, including powers of vesting, zoning and planning, to ensure that housing provision meets current and projected needs in the city of Belfast.²¹

In **June 2019** Belfast City Council launched a consultation on its draft Green and Blue Infrastructure Plan and accompanying Open Spaces Strategy. The latter document included a very brief reference to Peace IV plans²², with a map that included the former Mackies site. This is noteworthy because the Strategy's definition of open space is "land where the primary function is related to their community, amenity, recreation, play and sport value; whether in public or private ownership"²³. The former Mackies industrial site, a brownfield area, does not appear in any way to meet this definition of open space. For its part Belfast City Council does not appear to have acknowledged this anomaly, or to have addressed the issue of how, why and on what grounds this brownfield site came to be included in Open Spaces planning in the first place.

Towards the end of the GBIP/BOSS consultation period, at the end of **August 2019**, Belfast City Council also opened a parallel consultation one of the five discrete sections of the Peace IV shared open spaces route, the one "from Ballygomartin Road to Springfield Road", covering the former Mackies site. (The Peace IV shared spaces scheme as a whole has apparently not been opened for separate consultation, just this one piece). The consultation organisers held four public information sessions, over a two-day period, in the first week of the consultation only.

Information available for consultation: The consultation web page for section 2 of the Peace IV 'Reconnecting Open Spaces' scheme consists of three paragraphs of text accompanied by two online maps. There is no explanation as to why this particular stretch of the Peace IV scheme was singled out to be sent to consultation on its own in this way; no text on the development or content of the scheme; and no explanation of the actual content of the plan

²¹ <https://minutes3.belfastcity.gov.uk/ieListDocuments.aspx?MIId=8749>

²² https://yoursay.belfastcity.gov.uk/parks-and-leisure/gbipandboss/supporting_documents/Draft%20Belfast%20Open%20Spaces%20Strategy.pdf p. 35. See also <https://www.belfastcity.gov.uk/buildingcontrol-environment/physical-investment/peaceIVsharedspaces.aspx>

²³ https://yoursay.belfastcity.gov.uk/parks-and-leisure/gbipandboss/supporting_documents/Draft%20Belfast%20Open%20Spaces%20Strategy.pdf p. 8.

other than vague arrows on the site map indicating different proposals for different segments of the DFC-owned site.

The consultation questionnaire requested input on two topics only:

1. the effectiveness of the “designs” (maps) in improving understanding of the project
2. the kind of events any respondents would like to see programmed along the route (once completed).

There is also a space for additional comments.

What the plan entails: From the scant information available on the maps it appears that Belfast City Council plan is to split the site to enable

- For the western side of the DFC land, inclusion in the Peace IV shared space scheme under the ‘Open Spaces Strategy’
- For the northern and eastern sides of the DFC land, an undisclosed “3rd party lands transfer”. (In response to FOI request, DFC told PPR that it does not have information on this, though it confirmed it currently retains ownership of the former Mackies site.)
- NOTE: The map also includes arrows indicating “proposed new private development by Braidwater”: due to the imprecise marking of the map, lack of boundary lines and absence of explanatory text, it is not clear whether this incorporates any of the DFC land or is only adjacent to it.

PPR considers both (or potentially all three, given the aforementioned lack of clarity) of these uses of publicly owned land in the vicinity of the highest housing need in the city, to risk breaching Belfast City Council’s local and international legal obligations (see below). PPR calls on Belfast City Council to include plans for building social housing for local families in housing need as a key component of its designs for this extensive 25-acre former industrial brownfield site.

Mackies is one of the few remaining brownfield sites in Belfast large enough to make an impact on the overburdened waiting list and the growing numbers of people homeless and/or in housing stress in the city. On this site the failed policies of the past, which have deepened poverty and homelessness and encouraged harmful political and developer-led agendas, can begin to be reversed.

C. Belfast City Council’s legal obligations

International human rights

The international human rights framework is made up of rights that are universal, indivisible, interdependent and interrelated²⁴. The right to a safe, clean, healthy and sustainable environment, for instance, is one part of this whole, and must be addressed in conjunction with the right to the highest attainable standard of health, the right to an adequate standard of living and the right to adequate housing, amongst others. Belfast duty bearers have a concrete legal duty to progressively realise ALL of these rights for residents of this city.

Specifically in the area of **environmental rights**, there is a growing body of expertise and identified ‘best practice’ around the use of a human rights based approach in environmental policy which could greatly benefit Belfast City Council’s planning in this area²⁵. The content of the **right to adequate housing** – including its components legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy-- is set out in detail in General Comment 4 of the UN Committee on Economic, Social and Cultural Rights²⁶. Within the rights framework, the United Nations recognises in particular the intrinsic importance of the right to adequate housing, calling it “a foundation from which other legal entitlements can be achieved”:

having access to adequate, safe and secure housing substantially strengthens the likelihood of people being able to enjoy certain additional rights... For example: the adequacy of one's housing and living conditions is closely linked to the degree to which the right to environmental hygiene and the right to the highest attainable level of mental and physical health can be enjoyed. The World Health Organization has asserted that housing is the single most important environmental factor associated with disease conditions and higher mortality and morbidity rates. This relationship or "permeability" between certain human rights and the right to adequate housing show clearly how central are the notions of indivisibility and interdependence to the full enjoyment of all rights.²⁷

Concerns about Northern Ireland’s and Belfast’s record on fulfilling its people’s right to adequate housing

In 2009 the UN Committee on Economic, Social and Cultural Rights stated:

This Committee is concerned about the chronic shortage of housing, in particular social housing, for the most disadvantaged and marginalised individuals and groups, such as...Catholic families in Northern Belfast, in spite of the financial resources provided, and other measures taken, by the State party in this regard.²⁸

²⁴ https://undg.org/wp-content/uploads/2016/09/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_a_mong_UN.pdf, p. 2

²⁵ See for instance *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: compilation of good practices (A/HRC/28/61)* at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/017/26/PDF/G1501726.pdf?OpenElement>

²⁶ <https://resourcingrights.org/en/document/9c55otxgab9jyodmijwgdnuq5mi?page=4>

²⁷ UN Fact Sheet 21, the human right to adequate housing at <https://www.un.org/ruleoflaw/files/FactSheet21en.pdf>, p. 5

²⁸ Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Territories (E/C.12/GBR/CO/5),

In 2016 it repeated:

The Committee urges the State Party to...intensify its efforts to address the challenges to overcome persistent inequalities in housing for Catholic families in North Belfast, including through meaningful participation of all actors in decision-making processes related to housing.²⁹

In 2013 the UN Special Rapporteur on Adequate Housing wrote:

In May 2009, the Committee on Economic, Social and Cultural Rights expressed concern that inequality in housing policy in North Belfast continued to affect the Catholic community (E/C.12/GBR/CO/5, para. 29). The Special Rapporteur recognizes the efforts of the Government to address these challenges. However, during her visit, she observed that long-standing issues related to inequality continue to require concerted efforts... [It is recommended that the government] put in place additional efforts to address challenges to overcome persistent inequalities in housing in North Belfast. For this purpose, active, free and meaningful participation of all in decisions made about housing should be promoted, including in relation to the collection of official data, that should be disaggregated, open and accessible to all.³⁰

And very recently in November 2018 the UN Special Rapporteur on extreme poverty and human rights wrote:

In Belfast, I was struck by the extent to which communities in the city are still segregated by physical barriers and I was concerned to learn about persistent inequalities along religious lines... People in Belfast told me that the government was not building sufficient social housing in predominantly Catholic areas, and Northern Ireland's Equality Commission found that Catholics experience longest wait times for social housing among all religious groups.³¹

NI legal framework

In terms of legislation, the NI Act (1998) sets out several fundamental principles. Section 28E deals explicitly with obligations around "poverty, social exclusion and patterns of deprivation based on **objective need**"³². Section 75(1) requires public authorities to have due regard to the need to promote **equality of opportunity** between persons of different religious belief,

12 Jun 2009 at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=E/C.12/GBR/CO/5&Lang=En, para. 29

²⁹ Concluding Observations of the Committee on Economic, Social and Cultural Rights on the sixth periodic report of the United Kingdom of Great and Northern Ireland (E/C.12/GBR/CO/6), 14 Jul 2016 at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=E/C.12/GBR/CO/6&Lang=En, para. 50

³⁰ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik. Addendum Mission to the United Kingdom of Great Britain and Northern Ireland (A/HRC/25/54/Add.2) at <http://www.undocs.org/A/HRC/25/54/Add.2>, paras. 73 and 80(i).

³¹ Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, 16 November 2018 at

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E>

³² <http://www.legislation.gov.uk/ukpga/1998/47/section/28E>

political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependants and persons without.

In the area of policy, the 2015 Fresh Start Agreement called for an outcomes-based Programme for Government³³. The draft PfG reflects a number of the key rights enshrined in the International Covenant on Economic, Social and Cultural Rights³⁴, for instance through

- Indicator 8, “improve the supply of suitable housing”, which has as a measure “the number of households in housing stress”³⁵ (relevant to the **right to adequate housing**)
- Outcome 4, “we enjoy long, healthy, active lives”, under which the NI Executive commits to “tackling poverty and deprivation”³⁶ (relevant to the **right to an adequate standard of living** and to the **highest attainable standard of health**)
- Outcome 8, “we care for others and we help those in need”, where the NI Executive commits to “helping people out of poverty and putting in place services to enable people to live better quality lives”³⁷ (relevant to the **right to an adequate standard of living** and a number of related rights)
- Outcome 11, “we have high quality public services”, whereby the NI Executive commits to “building services around the needs of users” and “evaluating the provision of services based on the outcomes they deliver in terms of increased wellbeing of citizens”³⁸ (relevant to **good governance standards**, linked to human rights (see more below))
- Outcome 14, “we give our children and young people the best start in life”, under which the NI Executive commits to “supporting families to care for children”³⁹ (relevant to the **child’s right to develop to his or her full potential** and related rights)

More specifically, the *Strategic Planning Policy Statement for Northern Ireland (SPPS): Planning for Sustainable Development* sets the planning framework for Northern Ireland. The draft equality screening document for the Green and Blue Infrastructure Plan, found at the GBIP/BOSS consultation webpage, states “as the high level strategic planning policy statement for NI, there are no specific policies within the SPPS that directly infringe upon the draft GBIP for Belfast”⁴⁰.

This statement is misleading. In fact, the SPPS refers specifically to green infrastructure, in the context of one of the five core planning principles of the SPSS, ‘improving health and wellbeing’. The SPSS states that it “should be designed and managed as a multifunctional

³³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf, para. 61.

³⁴<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

³⁵ <https://www.northernireland.gov.uk/sites/default/files/consultations/newnigov/draft-pfg-framework-2016-21.pdf>, pp. 13-14.

³⁶ *Ibid.*, p. 23.

³⁷ *Ibid.*, p. 31.

³⁸ *Ibid.*, p. 37.

³⁹ *Ibid.*, p. 44.

⁴⁰ BCC consultation web page, equality document (p. 5).

resource capable of delivering on a wide range of environmental and **quality of life benefits for communities**"⁴¹.

More generally, the SPSS describes the role of the planning system in terms that also reflect the inter-dependent nature of key rights:

the planning system has an active role to play in helping to better the lives of people and communities in Northern Ireland and in supporting the Executive's key priority of improving health and well-being. For the purpose of the SPSS the Department supports the World Health Organisation's definition of health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'.⁴²

Belfast City Council

Local government plays an important human rights role, and Council officials are every bit as much duty bearers as their regional and national counterparts. According to the UN Office of the High Commissioner for Human Rights

one of its [local government's] important functions is to provide public services that address local needs and priorities related to the realisation of human rights at the local level. Although the primary responsibility for the promotion and protection of human rights rests with national governments, the promotion of a human rights culture within local public services plays a vital role in promoting respect for and the realisation of human rights in society.⁴³

Integral to these rights is the right to safe, healthy and secure housing – something that is denied to several thousand homeless people and/or people in housing stress in West Belfast alone.

⁴¹ SPSS 2015 at <https://www.midandeantrim.gov.uk/downloads/SPSS.pdf>, para. 4.6.

⁴² Ibid., para. 4.3.

⁴³ See <https://www.ohchr.org/EN/Issues/LocalGovernment/Pages/Index.aspx>

2/ KEY ISSUES WITH THE CONSULTATION

A. Failures in equality screening

Belfast City Council's equality scheme sets out its obligations under section 75 of the NI Act (1998). It explains that

An equality impact assessment (EQIA) is a thorough and systematic analysis of a policy, whether that policy is formal or informal, and irrespective of the scope of that policy. The primary function of an EQIA is to determine the extent of any impact of a policy upon the Section 75 categories and to determine if the impact is an adverse one. It is also an opportunity to demonstrate the likely positive outcomes of a policy and to seek ways to more effectively promote equality of opportunity and good relations.⁴⁴

The proposal for the former Mackies site – like both Belfast City Council's wider Green and Blue Infrastructure Plan and Open Spaces Strategy -- has **not been subject to full equality impact assessment**, despite the obvious equality ramifications of the decisions underpinning them. This gives rise to serious questions including:

- *How can the decision not to carry out a full EQIA on any of the three relevant 'policies' – the Green and Blue Infrastructure Plan, the Belfast Open Spaces Strategy and the design for section 2 of the Peace IV shared spaces scheme – be explained, when there are obvious equality ramifications of the decisions to use the former Mackies site in the ways proposed? These include, at a minimum, on the basis of **age** (children's right to develop to their full potential, and to adequate housing as a key component of an adequate standard of living) and on the basis of **religious belief** (given the evidence presented above, based on Housing Executive data, of inequality in access to and provision of social housing in adjacent or nearby areas of differing predominate religious communities).*

The Belfast Open Spaces Strategy equality screening document, such as it is, says in 'assessing' the impact of the strategy relevant to age that

access to greenspace and nature is important for people of all ages. Evidence suggests that children and young people have less than a connection with nature than previous generations, which results in reduced physical and mental well-being such as Nature Deficit Disorder (p. 6).

It is frankly shocking that Belfast City Council would mention these as genuine equality concerns while omitting to even mention the **officially-recognised homelessness blighting the lives of at least 1,145 local children in West Belfast** and to the housing stress affecting, at last count, 2,368 West Belfast households. These are matters of which elected Council members are well aware, given that they unanimously passed a motion on this issue in December 2018.

⁴⁴ <https://www.belfastcity.gov.uk/council/equality/equality-scheme.aspx>, para. 4.16.

- *Given the December 2018 Belfast City Council motion calling for action against child homelessness, how can these issues have been omitted from the equality screening? How can Council officials have failed to acknowledge the opportunity cost to these children and their families of electing to dispose of this crucial public land in ways that exclude social housing? How does Council justify this dereliction of its duty to house homeless children and families?*

The equality documentation – such as it is – for the Open Spaces Strategy, Peace IV scheme and any other decision-making around this key brownfield site must fully assess section 75(1) equality impacts across religious groups. Given that – as shown above – there is demonstrable and serious religious inequality in access to social housing, with severe and growing unmet housing need in one particular religious community alongside very low or nonexistent housing need in the other community, this is an issue that is of paramount significance in decisions around allocating local land.

Belfast City Council, in line the guidance of its own Equality Scheme, must produce a full Equality Impact Assessment for this strategy – not just a brief screening document.

The Equality Impact Assessment must include a thorough analysis of the full range of equality impacts of this proposed strategy. It is not enough to repeat “the draft BOSS is expected to impact positively across the entire population” over and over, as in the existing screening paper. In an urban environment with multiple vulnerable groups and conflicting demands for land use, Council’s assessment must be substantial, thorough and nuanced. It must fully investigate and analyse the equality impact of decisions to use urban land for purposes other than meeting the urgent housing needs of homeless children and families and those in housing stress – particularly given the demonstrated context of religious inequality in access to the right to adequate housing.

B. Concerns about the consultation process

Belfast City Council’s own Equality Scheme states

We are committed to carrying out consultation in accordance with the following principles (as contained in the Equality Commission’s guidance “Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities (April 2010)”.⁴⁵

It then sets out the requirements for consultation. First,

All consultations will seek the views of those directly affected by the matter/policy, the Equality Commission, representative groups of Section 75 categories, other public authorities, voluntary and community groups, our staff and their trades unions and such other groups who have a

⁴⁵ <https://www.belfastcity.gov.uk/council/equality/equality-scheme.aspx>, para. 3.2

legitimate interest in the matter, whether or not they have a direct economic or personal interest.⁴⁶

How, then, can Belfast City Council officials answer the following questions?

- *The Equality Can't Wait / Build Homes Now group has publicly campaigned for social housing on the former Mackies site for years – with support and participation of local political parties, elected representatives, community groups and residents. Yet the group knew nothing about this Peace IV scheme until it had been fully developed, published and integrated into the Open Spaces Strategy. What if any were the mechanisms used by Belfast City Council officials to “seek the views of those directly affected” as required, before the public issuing of the January 2018 Peace IV launch booklet? Before inclusion of the scheme in the draft Open Spaces strategy?*
- *Can Council explain on what basis those approached for engagement were selected? For instance, residents of the four homeless hostels in close proximity to the Mackies site and families on the social housing waiting list report being wholly unaware of the Peace IV plans and consultation. Responses to Freedom of Information requests reveal that consultations have been held with some elected representatives and organisations; when #BuildHomesNow campaigners met with Council officials in October 2018 and raised these issues with them, they were informed that the consultees had not raised housing as a particular issue. Who were the consultees and on what basis were they selected?*
- *How did it come about that officials with decision making powers over the future of this important site apparently chose to assess housing need on the basis that it was not raised by consultees? Why did officials use consultees’ opinions as a more viable source rather than the official figures on housing need held by the Housing Executive, the responsible public body? Was there any engagement with the Housing Executive on housing need in the local area? If not, why not, particularly given that this was not a site already zoned for recreational use, but rather a brownfield site?*

Council’s Equality Scheme also states

Consultation with all stakeholders will begin as early as possible. We will engage with affected individuals and representative groups to identify how best to consult or engage with them. We will ask our consultees what their preferred consultation methods are and will give consideration to these. Methods of consultation could include: Face-to-face meetings, Focus groups, Written documents with the opportunity to comment in writing, Questionnaires, Information/notification by email with an opportunity to opt in/opt out of the consultation, Internet discussions or Telephone consultations. This list is not exhaustive and we may develop other additional methods of consultation more appropriate to key stakeholders and the matter being consulted upon.⁴⁷

How, then, can Belfast City Council officials answer the following questions?

⁴⁶ Ibid., para. 3.2.1

⁴⁷ Ibid., para. 3.2.2

- *Other than the four public meetings over a period of two days in week 1 of the hastily-called consultation on plans for the former Mackies site in September, what other fora / mechanisms / consultation methods have there been for public involvement of directly affected people in the design and development of the scheme? Of other members of the public, housing associations, concerned Belfast City Council councillors and other elected officials, the Housing Executive, the Department for Communities, and other concerned actors? Does Council genuinely consider that four public meetings over two days fulfils the letter and the spirit of its own Equality Scheme?*

Belfast City Council's Equality Scheme further states that

We are conscious of the fact that affected individuals and representative groups may have different needs. We will take appropriate measures to ensure full participation in any meetings that are held. We will consider for example the time of day, the appropriateness of the venue, in particular whether it can be accessed by those with disabilities, how the meeting is to be conducted, the use of appropriate language, whether a signer and/or interpreter is necessary, and whether the provision of childcare and support for other carers is required.⁴⁸

How, then, does Belfast City Council officials answer the following questions?

- *Given that the people who stand to lose the most if the former Mackies brownfield site is used for a purpose or purposes other than meeting their acute housing needs are, by definition, vulnerable – including residents of homeless hostels, children growing up without the stability of a home, adults in housing stress – what “appropriate measures” were taken to seek them out and ensure their “full participation”? What considerations were taken into account, out of the above list or any other?*

Belfast City Council's Equality Scheme continues,

We make all relevant information available to consultees in appropriate formats to ensure meaningful consultation. This includes detailed information on the policy proposal being consulted upon and any relevant quantitative and qualitative data.⁴⁹

How, then, does Belfast City Council officials answer the following questions?

- *How can meaningful consultation be carried out on the basis of the three paragraphs of text and two fairly vague maps (without boundary lines, explanatory text etc) on the consultation webpage? Where was the “detailed information”?*
- *Given that Belfast City Council appears not to have availed of readily data on homelessness and housing stress from the Housing Executive and other highly relevant information from the Equality Can't Wait / Build Homes Now campaign, other housing groups, residents of*

⁴⁸ Ibid., para. 3.2.8

⁴⁹ Ibid., para. 3.2.9

homeless hostels, local residents enduring housing stress etc, does Council consider that it has provided the public – or itself, for that matter - with “relevant quantitative and qualitative data”? How does it plan to rectify these serious omissions?

- *Given that it is only upon close reading of the definition of ‘open spaces’ that the #BuildHomesNow campaign realised that the Mackies brownfield site is not an ‘open space’, will Belfast City Council provide information about how the decision to treat it as such was reached, so that full scrutiny and meaningful consultation can take place? This is clearly meaningful and significant information – why was it not made clear in the course of the consultation? Is that omission not clearly a breach of the terms of Council’s Equality Scheme?*
- *Given the lack of clarity around both the “proposed new private development by Braidwater” and the “3rd party lands transfer” referred to in the consultation map, how can the consultation be, or be seen to be, at all meaningful? In the view of Belfast City Council, when the public does not know what it is being consulted about what room is there for either scrutiny or accountability?*

C. Transparency, accountability, participation and other governance concerns

In 2000, the former UN Commission on Human Rights issued resolution 2000/64 on the key attributes of good governance⁵⁰:

- transparency
- responsibility
- accountability
- participation
- responsiveness to the needs of the people

In the resolution, the Commission recognised that “transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of the people, is the foundation on which good governance rests, and that such a foundation is a sine qua non for the promotion of human rights”⁵¹.

For its part, in May 2008 Belfast City Council put forward a draft Code of Governance based on the CIPFA Solace Framework⁵². For the purposes of this consultation response, the most relevant of these are

4. *Taking informed transparent decisions which are subject to effective scrutiny and managing risk.(...)*

⁵⁰ See inter alia

<https://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>

⁵¹ <https://www.refworld.org/docid/3b00f28414.html>

⁵² May 2008, draft Belfast City Council – Code of Governance at <https://minutes3.belfastcity.gov.uk/mgAi.aspx?ID=19797>

6. *Engaging with local people and other stakeholders to ensure robust local public accountability.*

This text has highlighted important issues around these points, with questions including

- *Where was the **transparency** in the drafting of the Peace IV component of the Open Spaces Strategy? What were the mechanisms for **scrutiny**? For **accountability**?*
- *The Open Spaces Strategy defines open space as “land where the primary function is related to their community, amenity, recreation, play and sport value; whether in public or private ownership”⁵³. The former Mackies industrial site, a brownfield area, clearly does not meet this definition of open space. Belfast City Council does not appear to have acknowledged this anomaly, or to have addressed the issue of how, why and on what grounds this brownfield site came to be included in Open Spaces planning in the first place. Who is **accountable** for deciding that the ‘primary function’ of the Mackies site was recreation and that the site met the definition of ‘open space’? Where was the opportunity for **scrutiny** of that decision, both before extensive resources (time, human, financial) were spent developing the intricacies of the Peace IV design and subsequently? Decisions about land use must take into account the range of interdependent rights held by the people of Belfast, from their rights to a safe, clean, healthy and sustainable environment to their right to the highest attainable standard of health to their right to a home; the assumption that this site could be best used by declaring its primary function to be recreational was fundamentally flawed.*
- *In December 2018, following meetings with homeless children from #BuildHomesNow, Belfast City Councillors unanimously passed a motion which ‘calls upon the Department for Communities and the Northern Ireland Housing Executive to work with the Council to use all available powers, including powers of vesting, zoning and planning, to ensure that housing provision meets current and projected needs in the city of Belfast’. Yet, as shown here, these issues do not seem to have been even considered in the documents presented later, or in the consultation process. How does Belfast City Council justify this failure by its officials, in light of good governance standards around accountability, transparency and scrutiny?*
- *As mentioned above, the online consultation is comprised of a total of three short paragraphs of text and two online maps only. However, a more in depth search for relevant documentation including use of Freedom of Information revealed that Belfast City Council’s initial proposed route for this section was “**through Woodvale Park**” but was then “**altered in favour of through the DFC/Invest NI land**”⁵⁴. The reasons given for the change included that the DFC land were “less identified as belonging to one community” (as opposed to “Woodvale Park strongly identified with one community”) and “InvestNI land offers more opportunities for further connections”. Who is **accountable** for this decision, which has excluded social housing on such a crucial site? Given that this information was buried in a lengthy technical document that was NOT available to the public during the consultation, where were the opportunities for **scrutiny** and **engagement**?*

⁵³ https://yoursay.belfastcity.gov.uk/parks-and-leisure/gbipandboss/supporting_documents/Draft%20Belfast%20Open%20Spaces%20Strategy.pdf p. 8.

⁵⁴ Belfast City Council, Peace IV Technical Feasibility Study, Sept 2018 p. 29.

- *Were the relevant procedures for bidding / tender (Belfast City Council Quality Policy⁵⁵, etc.) fully followed in setting up the plans for disposal of the (currently DFC-owned) lands to Braidwater and the '3rd party'?*
- *Were the specific procedures required from public sector bodies in disposing of surplus land or property fully followed? The relevant Department for Communities guidance indicates that*

one important exception is the ability to transfer the land/property to another Public Sector Body - or to another suitable body such as a Housing Association - acting on behalf of the Public Sector Body. The transfer of Public Sector land/property to Housing Associations for the provision of social housing for rent is considered to be within the guidelines. Land & Property Services act as a clearing house for public sector land declared as surplus to requirements and NIHE (DPG) manage the Housing end of the process.⁵⁶

The consultation documentation indicates that part of the land around the site is for private residential development, and that an apparently larger portion is to be subject to '3rd party land transfer' to an undisclosed party. Under Freedom of Information, the Housing Executive said that it did not hold information about disposal of or plans for the site – by the above guidance, that would definitively indicate that the disposal was NOT to build social housing. How does the Belfast City Council explain this apparent anomaly?

Information on **accountability, transparency and engagement** in those processes is especially important in this case given (a) the perception of opaqueness and lack of clarity around development and content of the plans and the consultation process and (b) the huge potential and significance of the former Mackies site for social housing. That significance has increased in recent years in tandem with local levels of homelessness and housing stress amongst people suffering the concrete mental, physical, emotional, social and other effects of duty bearers' failure to meet their right to adequate housing.

⁵⁵ See Belfast City Council Quality Policy via www.belfastcity.gov.uk/business/tenders/sellingtips.aspx

⁵⁶ <https://www.communities-ni.gov.uk/public-sector-land-public-subsidy>

CONCLUSIONS AND RECOMMENDATIONS

The former Mackies site is a large area with ample space for development to fulfil interdependent types of rights, including housing, health, environmental and others.

Pitting ‘shared spaces’ against, and prioritising it above, the promotion of equality is a breach of the Council’s statutory obligations under Section 75 of the Good Friday Agreement⁵⁷. The city’s spaces must be as open, green, shared and welcoming as possible; but they must also be used to meet acute housing need and to fulfil Belfast residents’ fundamental right to adequate housing. The two sets of rights are inter-related, and the two types of development can coexist and mutually reinforce each other.

In a city where housing need has been growing year on year, in an area with concentrated housing need adversely impacting the Catholic community, where housing supply continues to fall short of making a dent in the increasingly acute shortfall, and where thousands of families and their children are officially recognised as homeless, the decisions to

- plan to dispose of one of the few remaining large tracts of undeveloped brownfield land as though it met the definition of recreational ‘open space’ and
- proceed to design for its use in multiple ways, all of which exclude social housing for homeless people and people in housing stress in West Belfast

constitutes a *prima facie* failure of Belfast duty bearers’ to fulfil their obligations under domestic and international law and standards. These include the obligation to pay “due regard” to the need to promote equality when exercising its functions – including urban regeneration and planning.

Particularly with regard to any future development of the former Mackies site in West Belfast – in the midst of some of the areas of highest housing need in all of Northern Ireland – Belfast City Council must address housing, health and environmental rights together, and must do so in accordance with accepted good governance principles of scrutiny, accountability, transparency and engagement. As this response evidences, the current process falls well short of these basic principles.

According to site maps, the Council’s proposed scheme does envisage private housing – including a ‘proposed new private development by Braidwater’ next to an adjacent already-approved residential (247 unit) development. Incredibly, this policy preference for private housing development over social housing to address inequalities and objective need is apparently considered entirely consistent with the ‘shared spaces’ approach. Belfast City

⁵⁷ “[W]e regard equality of opportunity and good relations as complementary. There should be no conflict between the two objectives. Good relations cannot be based on inequality between different religions or ethnic groups. Social cohesion requires equality to be reinforced by good community relations. ... I repeat that we see no conflict between these two objectives” Dr Marjorie Mowlam (27 July 1998) House of Commons, Official report col. 109

Council cannot justify excluding social housing -- the only type of housing accessible to local vulnerable families enduring housing stress and homelessness – from the Mackies site.

The plans must be redrawn.

To facilitate this, alternative arrangements must be considered, including reversing the decision – taken by Council without any public scrutiny -- to alter the proposed route to go through the DFC-owned land at the former Mackies site rather than through Woodvale Park. Effectively, the Council is reinforcing sectarian demography and therein ensuring that social housing - used to address documented religious inequality – will not be built.

Elected Belfast City Councillors have shown, with their December 2018 motion, that they are deeply concerned about child homelessness in their city. Belfast City Council officials however appear not to be on the same page. This gap must be corrected in order for Council to fully comply with its domestic and international legal obligations towards its residents.