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Rt. Hon. Rhodri Morgan AM
First Minister for Wales
Welsh Assembly Government
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5th August 2009
[by email]

Dear Sir

Complaint relating to infringement of rights enshrined in the Aarhus Convention – a response.

I would like to thank your staff and wider officials for taking the time to consider my letter on your behalf (5th August 2009 Your ref FM/05398/09). However, I feel deeply disappointed in many aspects and detail within the response, and will now seek redress from the Ombudsmen, the next step prior to approaching UNECE.

The key point which has been presented to Welsh Assembly, Diana Reynolds and her staff is that the *publically funded* long term consultation **partnership** process for Newborough, and the framework within which it was set, have been deliberately undermined and misled by the Countryside Council for Wales.

“The LP [liaison partnership] work encompassed 14 plenary meetings. In addition, five task and finish groups were established, and each comprised between 6 and 15 independent meetings. There were also two rounds of wider public consultation, including a forest fair. This is an impressive collaborative attempt at co-developing an FDP, one that relied upon all relevant material being made available.”

Audio tapes of the September meeting 2004, and subsequent written material, support my assertion of deliberate and inappropriate actions of CCW, and I believe are compelling proof to substantiate my complaint. In addition, when local people met with the Head of Nature Conservation Branch informally in Newborough she accepted that CCW had failed the consultation process in many respects and needed to ‘**learn from Betty**’ i.e. be shown by those competent at consultation how to do it. We were expecting substantial answers from Nature Conservation Branch relating to CCWs behaviour, but I am afraid all we have is the imposition of a Working Group for which no Terms of reference or membership have yet been produced, and which falls outside of the terms local groups agreed to when we signed up to the Newborough Forest Liaison Partnership in 2004. I am afraid that announcing a ‘Working Group’ does not wipe away the serious questions that relate to the conduct of the CCW agency.

To be blunt, the fundamental point of the public complaint which I echoed has not been addressed by officials in the response to my 11th July or earlier letter to you. The reason for this failure is a matter of conjecture, but I believe it may reside in the fact the knee jerk reaction of administration officials to a letter of complaint sent to the EU regarding Newborough, a reaction that took place without a full understanding of the consultation partnership that was underway or Terms of Reference put in place when Carwyn Jones AM held the Environment portfolio.

Because of this knee-jerk reaction, FoI requests were launched, and we know now that the consultation took place only for a Government agency to introduce crucial material evidence afterwards, material and ‘legal obligations’ that by their very nature insists on fundamental changes to the outputs of the consultation. This is not minor revision; it is wholesale change back to the very principles rejected by the public in 2004. The explanation given by CCW to you is flimsy, is challenged by recent evidence (including EIR requests from FCW), and makes no attempt to explain why the legal obligations being asserted now were not presented in September 2004 to us, the Forestry Commission Wales, or the facilitator?

If Welsh Assembly Government officials believe that this how consultation should take place it is a dire indictment on the democratic principles in place during your administration and Stewardship of Wales. Further, it is rather unfortunate that Welsh Assembly officials seem to view the fact that because people demanded that a review of the hidden material should take place [this was our insistence not a unilateral offer from CCW], that somehow this is a tacit and uncritical acceptance of the legitimacy of the earlier concealing of material. What is quite perverse is that in the written response to me on your behalf, it is highlighted that discussion of the material now illustrates commitment to Aarhus!! What about the concealment and implications for the previous four years of public funded partnership? The Aarhus convention enshrines the public’s rights to open transparency and environmental democracy; it does not allow Government agencies and officials to simply decide whether or not the principles will apply and to ignore them when convenient. I will leave an ultimate determination on the conduct of CCW in the hands of the Ombudsmen.

However, on the wider issue of Aarhus principles, I am still waiting for an answer to the following from July 11th:

“Of very serious and grave concern relates to WAG apparently seemingly being unable to facilitate Access to Justice, the third pillar of the Aarhus Convention. On 4th May, I asked the Welsh Assembly by letter and specifically under the Aarhus banner:

‘The Aarhus Convention provides EU Citizens with a number of rights, what compliance mechanism is place in Wales? And have WAG put in place the means by which EU Citizens can have access to legal justice when their rights under the Convention are breached or denied?’

The letter was acknowledged in May, with a statement that WAG was consulting legal departments. However since then no response has been received. Similarly on 29th May 2009, I wrote to DEFRA CCU regarding the Aarhus Convention, an enquiry which they passed to WAG and to which again I have had no response.” – **might I have an answer and an explanation as to why officials have ignored repeated requests for a response.**

One additional and key point is that the CCW TSG document *can not* be considered as ever being an internal document; it is part of a legal process required under the Habitats Directive in relation to Article 6(3) plan screening, a process that must be auditable, it was also released under an FoI request that explicitly asked for *the guidance given by CCW to FCW*. This is further substantiated by the fact that, under Environment Information Regulation request, it has been revealed that it is a formal document given to FCW by CCW in order for them to revise their plans; a document provided before any suggestion of this sudden Working Group manifestation (the timetable of documents clearly supports this assessment). A crucial fact is that *it is not the document itself that is key with regards Aarhus, but rather the data, opinion and. scientific material underpinning it*, it was this that was withheld. This matter has not been addressed to date, a neither has the systematic failure of Welsh Assembly officials to provide an answer to it.

I am also somewhat confused about how a forest design plan, and plans for particular woodland species, can be prepared before a crucial component (in this case the legitimacy of legal assertions and scientific opinion that will be reviewed) is in place? This is like building a house and then trying to put the foundations under it – a costly process called underpinning. It would make no sense to pursue any further forest planning prior to the review and without also considering that this review was agreed by the community with the caveat that it was without prejudice to the complaints relating to Aarhus. The Welsh Assembly Government should consider the implications of a judgement against them, in particular with respect to the implications for plan development.

Finally the recent process and position statements produced by WAG, which appear to inform much of your letter, grossly misrepresent a number of discussions that took place and agreements made, the latter is also legally unsound in relation to the Habitats Directive (another written point *still to be addressed* in previous communication with WAG officials). The process statement also frequently lacks sufficient detail to make many of the points meaningful or substantive, and often contradict statements from CCW made in April 09, a meeting for which there is an audio recording, and a meeting at which your agencies explained the ‘next steps’.

Politicians of all political colours frequently repeat the mantra that they need to re-engage with the electorate; examples being the recent expenses scandal, the banking crisis, and unfavourable election results. Similar heart-felt calls for ‘trust’ by elected officials follow the action of civil servants - be it lost officials papers and documents, failures to regard working guidelines, or where decisions are made without full regard to the political implications. Given that Civil servants are ambassadors of Government, I would ask both you and the Deputy First Minister to ask your officers to reconsider the response to my

complaints and concerns that they have made on behalf of the Assembly Government. I believe that you are being misinformed by officers unwilling to shoulder responsibility of public office and to admit to failings under their watch. Hearing the opinions and concerns of the community is not the same as listening to them.

With deep disappointment

Yours sincerely

Dr Craig Shuttleworth