ARCHITECTS' ALLIANCE

Better Regulation – YES

Closed Shop – NO

A PRESENTATION TO THE

JOINT COMMITTEE ON THE ENVIRONMENT,

CULTURE AND THE GAELTACHT

ON

3 JULY 2012

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- The Scope/Purpose of the Hearing

  The arguments we successfully presented at the May 2010 Hearing will not be repeated in this paper and as directed we will treat the official record as read.
  Instead, we will be addressing the significance of New Information and how it points to a solution to this damaging affair.
  That information is the official reply given on the 21st February this year by Michel Barnier, European Commissioner responsible for internal market and services, to questions put by Marian Harkin MEP and Nessa Childers MEP.

- The Background

  Parts 3, 4 and 5 of the Building Control Act 2007 restrict and protect the use in business of the words 'architect', 'quantity surveyor' and 'building surveyor' respectively to those named in three, newly created Statutory Registers.
  The dominant professional organisation in each case was chosen and named in the Act as the relevant Statutory Registration Body - despite the Competition Authority's recommendation that more effective regulation would be assured through the making of an independent registration board for architects.
  The restrictions created by the Act were intended for the public good and the interests of consumers.
  The European Union shares and promotes those aims through much of its legislation but it does not promote the national registration of architects (or of surveyors) for those or any other purpose.
  National registration is a decision for each Member State. It can be avoided, introduced, modified or dismantled without obstructing European law.
  Parts 4 & 5 of the Act include register admission routes for 'Grandfather' surveyors.
  In common with all known Grandfather Clauses, those routes are designed to be inclusive.
  In the Act, Part 3 for architects includes a fundamentally different register admission route for Ireland's acquired rights architects.
  It is neither a Grandfather Clause nor a Recognition of Prior Learning process.
  Instead it is an assessment of the academic skills required for automatic recognition under the Directive.
  The severe disparity described here is not in dispute.
  It lies at the root of the Alliance campaign for fair and proper treatment under Irish law.
  Whereas, it is lauded by the Royal Institute Ltd as a desirable imposition which is dictated by European Law.

Whichever of these opinions you favour, the consequence is undeniable –
Fewer architects on the State register of architects and in the market.
That means less choice, less diversity, less innovation.
Put plainly, it means a Closed Shop.

- Our desired outcome of the Hearing
  The Alliance hopes to present a good case for granting us equal treatment under the law with our fellow construction professionals.
  We hope for your decision to request the Minister's formal consideration of the Solutions we table in this paper and for your support for its early implementation.

- The New Information since the first Hearing
  There is no impediment under European Law to the making of a Grandfather Clause for architects in Ireland. The Commissioner wrote:

  "**In other words, the Directive does not prohibit Member States from granting access to the profession of architect on their own territory to persons whose qualifications do not meet the Article 46 requirements, including any persons whose qualifications would be subject to a grandfathering clause."**

- The Directive & the Building Control Act 2007
  It should be understood that the Directive is concerned with facilitating access for migrant professionals within the EU. The Directive is not about the raising of barriers to shelter chosen associations or professional bodies.
  Its inclusive intent is shown in this extract also from Clause 28 of the preamble:
  "With a view to simplifying this Directive, reference should be made to **the concept of 'architect'** in order to delimit the scope of the provisions relating to the automatic recognition of the qualifications in the field of architecture, without prejudice to the special features of the national regulations governing those activities."
  Section 2.(3) of the Act establishes that:
  "A word or expression used in *Part 3*, *4*, *5* or *7* and which is also used in the Directive has the same meaning in that Part as it has in the Directive."
  As regards the spirit of the Directive and its transposition into Irish law, the relevant word in the Act is 'architect'.

- <u>The Significance of the EC Statement</u>

  We have but a small voice, yet we have fought hard and long.
  We have argued for effective regulation, for equality, justice and plain, ordinary decent treatment under the law.
  But behind those important principles lies one cold and hard fact.
  We have been robbed of our livelihoods.
  The Commissioner's Statement shows how that can be lawfully remedied.

- <u>Standards cannot be achieved if there is No Competition</u>

  The current registration regime promised high standards for consumers through its favouring of school-trained architects whose performance in the real-world is warranted by CPD programmes.
  It promised adherence to building standards and professional codes.
  Above all it promised safe hands, effective redress and professional sanctions to guard against failure.
  Current, highly publicised building failures show otherwise and are a warning that fine words are not always matched by fine deeds.
  The Alliance supports regulation that safeguards the public and secures the public interest - regulation which is effective.
  The registration of architects is a brand new arrangement but it was introduced without the benefit of a Regulatory Impact Study.
  Inevitably that failure led to registration being gifted to the dominant representative body and to the marginalising, in fact criminalising, of their competitors.
  Restoring competition is central to achieving standards, both regulatory and professional.
  Ideally any entirely new registration scheme, such as this one, should start by creating a level playing field. It's not difficult to achieve provided vested interests are ignored. It's simple enough - Everyone should be equally and anonymously examined. Baccalaureate-style Architects' Register Admission Examinations exist. They are completed over a few days at official centres and the charges are modest.
  A transparent arrangement such as this would secure the public good and consumer interests.
  If we are past the point where that is feasible, then a different approach is needed. But it should be one that makes optimum use of proven skills already in the market or profession. Encouraging competition and diversity are surely more certain ways of achieving standards than the present arrangement.

- Grandfather(ing) Clause

  There is nothing exceptional about our claim for a Grandfather Clause to be added to the Act. Indeed there are examples in Ireland and beyond of Grandfather provisions which apply to an already defined and finite body of practitioners.
  The qualifying measure is usually that of tenure or longevity in making one's living in the particular field. Evidence of successful prior establishment is the proof demanded. Grandfather Clauses are inherently self-extinguishing, though often there is a cut-off date for applications of two or three years. A Transition Period operates meanwhile.
  Several Member States introduced Grandfather Clauses for architects as a matter of natural justice. Clearly their major professional bodies did not howl in rage.
  It really must be remembered that we are talking about professionals who practised successfully and safely and entirely within the law of the day.
  However, we actually need look no further than the Act itself and the Directive.
  The Parts 4 & 5 Technical Assessment procedures for Surveyors would be acceptable models for a Part 3 Technical Assessment / Grandfather Clause for architects. {Part 4 S.36(1)(b)&(2); Part 5 S.50(1)(b)&(2) cf Part 3 S.22 esp. (7)(c)}
  Already within Part 3, there are 170 Acquired Rights Architects identified as being eligible for both automatic registration and automatic rights under the Directive. They qualified for inclusion in 'The Minister's List' on the strength of 5 years of establishment. {S.14(2)(d); S.14(4)}
  Germany's Fachochshulen (technical school) graduates are accommodated in S.15(1)(g) of the Act.
  In the Directive there are acquired rights provisions for many categories of professionals. For example Ireland has a dispensation for Royal Institute architects who achieved membership prior to 1987/8. {Art. 49 'Acquired rights specific to architects' Cl.1& 2; Annex VI, Table 6}

- The Solution

  We believe the EC Statement makes it clear that a standard Grandfather Clause for Ireland's architects would be entirely compatible with European Law.
  It is a readily achieved, uncomplicated solution:-
  A. Providing a Technical Assessment for architects which is equivalent to the Technical Assessments already provided in the Act for surveyors.
  We would expect to provide evidence of 5 years of prior-establishment, which is the same as applied to those on the Minister's List.
  This is our preferred Solution and its justice is plain for all to see.

We lobbied very successfully towards that solution both before and after the first Hearing in May 2010, only to be presented with a legal obstacle. Our allies, the media and also Government were informed that such a solution was inconceivable and was not permitted by European Law. That mistaken but influential opinion held sway until February 2012 when it was swept aside by the European Commissioner with the New Information.

That experience has taught us to be cautious. Many of us are of an age when two further years of delay would be like ten years to a younger person. Therefore we are also tabling an alternative solution. It is intended to answer any genuine legal obligation which may be found for architect Grandfathers to demonstrate more than prior establishment in order to be registered in the State.
The solution has two parts:-

B1: Registration of those with relevant third level qualifications or accreditation by relevant, established professional bodies - subject to providing evidence of having made their livings as architects for 5 years prior to the Act.
(Qualifications and accreditations held by members include MSc, BArch, BArchSc, DipArch, DipArchTech, MRICS, ABE, CIOB, CIAT)

B2: Registration of those who pass or have passed the post-graduate written examination for architects conducted by UCD (and others) - subject to providing evidence of having made their livings as architects for 10 years prior to the Act.
(The written examination is the academic and major element of this three-part post-graduate examination in professional practice. The acceptability of the written module rests on it being anonymous, like other written examinations. There is a published syllabus, reading list and past papers, it has not been specially devised for us alone, the pass level is understood, etc. All-in-all, the written module is a transparent and objective academic process, entirely unlike the present, one-chance-only, Part 3 Technical Assessment.)

For this two-tier proposal to succeed we would require simple assurances:-
The purpose, scope and cost of the post-graduate written examination would not deviate and the Royal Institute Ltd would continue to have no involvement in the setting or marking of the examinations or in any appeals.
Solution B(1&2) is not preferred. We believe it is not warranted unless it resolves a genuine legal issue for the registration of Grandfather architects in the State.

- An Amendment is Unavoidable

There are several impediments to the due operation of the Act as it stands.
One is financial insofar as the Royal Institute Ltd is proposing to engross its own, private membership charge within the Statutory registration fee.
The Minister has so far declined to prescribe a registration fee. {S.62(3)}
Another is the absence of the permanent mature entry route called the PRAE. The Minister has so far declined to prescribe the sole privately-run examination which has been recommended by the Royal Institute Ltd for the purpose. {S.14(2)(f)}
Others defects in the Act are profound and explain the Minister's reluctance to appoint members to the Professional Conduct Committee and, we believe, to the Appeals Board. {S.23; S.24}
Despite all the claims and assurances, the Act provides no means for actual redress for consumers. Instead it deals ineffectually with the chastising of wayward architects.
We are aware that the European Ombudsman is investigating a complaint concerning Part 3 of the Act because of its failure to recognise periods of work undertaken in other Member States. {#0503-2012-RA}

The Act does require amending - which makes the addition of a Grandfather Clause in Part 3 rather less troublesome than it seems.
