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by

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Planning Reform Bill (1): Departmental Functions & Local Development Plans

NIAR 11-11

This paper is the first of four papers produced in support of the Committee stage of the
Planning Bill

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Key Points

- The Bill sets out the function of the Department of the Environment in respect to planning as being to "formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development". This remains unchanged from previous legislation and no amendment is proposed in line with the culture of change and shift in function from land use planning to spatial planning.
- The proposed NI legislation does not include an explicit reference to the important links between the Local Development Plan and the Council's Community Plan.
- If the new legislation is the beginning of a process of introducing spatial planning into Northern Ireland, then this represents a radical change to the planning system.
- The legislation will require supportive policy and guidance.
- The new legislation and overall approach to spatial planning will require substantial training for all stakeholders.
- The new legislation together with follow-up policy and guidance will necessitate the creation of a set of intra-government relationships that should be carefully considered. The relationship of the Local Development Plan (LDP) to the Regional Development Strategy (RDS) needs to be carefully considered.
- Area action planning has not been included in the proposed legislation, unlike the case in England
- The Department is not bound by the recommendations of the independent examination.
- The Department seeks the power to direct councils to produce joint development plans
- Implementation and delivery is at the heart of spatial planning.

Executive Summary

This briefing paper is the first of a set of four prepared for the Committee Stage of the Bill, providing analysis of the provisions in the Planning Bill which sets out the draft legislative framework for new and revised planning procedures in Northern Ireland. The proposals in the Bill substantively replicate the instruments contained in the Planning and Compulsory Purchase Act 2004 which applies to England and Wales and the Planning (Scotland) Act 2006. These Acts effectively placed the new concept of 'spatial planning' on a statutory basis in these parts of the UK. Reform of the planning system in the Republic of Ireland is also underway, which will also place spatial planning as a core principle in its planning system.

Spatial planning moved the emphasis away from planning as simply regulatory practice narrowly focused on land use to planning as an activity that is both integrated with other local government services and is focused on delivery. In this context the development plan becomes, what the Department of Communities and Local Government's Planning Green Paper 2001ⁱ described as, 'the land-use and development delivery mechanism for the objectives and policies set out in the Community Strategy'. This has been accompanied in other parts of the UK by attempts to uplift the skills and outlook of all those involved in the planning system, in what has been called a "culture shift", represented by a move from "Development Control" to "Development Management".

This Bill makes the initial statutory provision for this approach to be adopted in Northern Ireland, in the context of district councils taking over some of the planning responsibilities currently handled by the DoE (NI). The basic provisions of the proposed NI legislation will, it is assumed, be supported by a new Planning Policy Statement (PPS) which would explain what local spatial planning is, and how local development plans should be prepared. Additional written guidance and support should also be forthcoming.

In order to both understand and scrutinise the legislation it is important to acknowledge the difference between two types of planning; land-use planning and spatial planning. The former characterizes the present system and practice in Northern Ireland, whereas the latter seems to be what is proposed for a future system.

The shift to a new form of planning, primarily located within reformed local government structures in Northern Ireland will present significant challenges for all stakeholders including professionals, officials and politicians. Arguably though, the benefits of these changes potentially far outweigh the costs of major changes in culture and practice.

This paper is the first of four papers produced in support of the Committee stage of the Planning Bill, which are:

- Paper 1: Departmental Functions and Local Development Plans
- Paper 2: Development Management
- Paper 3: Community Involvement
- Paper 4: Capacity, Delivery and Quality

Contents

Key Points 1

Executive Summary 3

Introduction..... 7

1 Overview & Analysis of the Key Themes..... 9

2 Equivalent arrangements in comparable jurisdictions 12

3 Contentious Areas 12

Introduction

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In this paper:

- **Section 1 provides an analysis of the key themes;**
- **Section 2 reviews equivalent arrangements in comparable jurisdictions; and**
- **Section 3 identifies contentious issues which may require further scrutiny.**

In considering these papers it may be useful to refer to the following documents in conjunction with this paper:

- The full Planning Bill (2010):
http://www.planningni.gov.uk/index/about/planning_bill.pdf
- Draft Explanatory and Financial Memorandum:
http://www.planningni.gov.uk/index/about/planning_bill_efm_-_as_introduced.pdf
- Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf
- Final EQIA at a strategic level:
http://www.planningni.gov.uk/index/about/final_eqia_at_strategic_level-2.pdf
- Independent Report from the Planning Reform Consultation Events 2009 Equality Statement:
http://www.planningni.gov.uk/index/about/independent_report_from_the_planning_reform_consultation_events_2009_f.pdf
- England and Wales Planning and Compensations Act (2004):
<http://www.legislation.gov.uk/ukpga/2004/5/contents>
- Republic of Ireland Planning and Development Act 2000:
<http://www.irishstatutebook.ie/2000/en/act/pub/0030/index.html>
- Republic of Ireland Planning and Development (Amendment) Act 2010:
<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2009/3409/b34d09d.pdf>
- Planning (Scotland) Act (2006): <http://www.legislation.gov.uk/asp/2006/17/contents>
- England Localism and Decentralisation Bill (2010):
<http://services.parliament.uk/bills/2010-11/localism/documents.html>

1 Overview & Analysis of the Key Themes

- **Functions of the Department of the Environment** - Part 1 of the Planning Bill is concerned with the functions of the Department of Environment in respect to its planning powers. This remains unchanged from previous legislation, setting out its key statutory function to "formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development". Although the Department appears to be proposing the model of spatial *planning* as adopted in other parts of the UK, the Bill does not propose to amend the functions of the Department in line with this and they remain narrowly land use focused. Other sections in part 1 define the issues that can be taken into account when preparing plans with "social and environmental" being added to the "physical and economic" characteristics any area. Part 1 of the Bill also reaffirms the duty on the Department to prepare a statement of community involvement. These issues are further highlighted under the section on "Contentious Areas" below (see also Paper 4 forthcoming).
- **A New Approach to Development Planning** – As noted in the introduction, the proposed new legislation will trigger a significantly new approach to development planning in Northern Ireland (NI). The broad consensus from a review of practices elsewhere suggests that a shift to spatial planning provides a more relevant and cost effective response to changing social, economic and environmental circumstances. This is reinforced through its focus on delivery; on creating and shaping place; and on its potentially strong connection to the wider vision expressed through the community plan.
- **Local Development Plan & the Community Plan** - The proposed NI legislation does not include an explicit reference to the very important links between the Local Development Plan (LDP) and the Council's Community Plan. In England & Wales the 2004 Act states that the local planning authority 'must have regard to the community strategy prepared by the authority' [19 (2) (f)]. This explicit link is crucial if the new approach to development planning is to be effective. Indeed it can be argued that the Community Plan should provide the lead for the Local Development Plan so that the LDP becomes the spatial expression of the Community Plan. This then emphasizes the horizontal integration between functions and services and their spatial needs. In the Government's Response to the Consultation on Planning Reformⁱⁱⁱ it notes that 'there will be a statutory requirement for district councils to take account of community plans in the preparation of their local development plans for their area' (para. 2.105). *Arguably the lack of a statutory link weakens this key relationship.*
- **Supportive Policy & Guidance** - The proposed new legislation will be supported by new policy and guidance. This may take the form of a new Planning Policy Statement

(PPS) although other supportive guidance and manuals may also be forthcoming. It is critically important that these explanatory documents are developed in parallel with the legislation. For example, in England and Wales PPS 12 is entirely devoted to the new spatial planning system. It ‘explains what local spatial planning is, and how it benefits communities. It also sets out what the key ingredients of local spatial plans are and the key government policies on how they should be prepared’.

- **The Local Development Plan & the Regional Development Strategy** - *The relationship of the Local Development Plan (LDP) to the Regional Development Strategy (RDS) needs to be considered.* Section 8(5) of the draft legislation states that ‘in preparing a plan strategy, the council must take account of (a) the regional development strategy’. However, in Section 1(2), in relation to the general functions of the Department with respect to the development of land, it states that the Department must ‘ensure that any such policy is in general conformity with the regional development strategy’.

Despite majority concerns expressed in the public consultation about the ‘possible downgrading / reduction in the role of the RDS’ (2.86), the Department has maintained its view that the current phrase ‘in general conformity’ will not be carried forward for local development plans prepared by district councils. It does not view this alteration, to the legislation, as a ‘downgrade’ as., the requirement that the DoE shall have regard to the RDS in exercising its functions in relation to development, will place a statutory requirement on district councils to require them to take account of the RDS in their LDP preparation.

However, in the England & Wales legislation a section is devoted to ‘conformity with regional strategy’. It is important to note that there is an implied ‘legal hierarchy’ for plan relationships, with ‘must be in conformity’ as the strongest phrase.

- **The Local Development Plan & other Government objectives.** The model of spatial planning allows for the planning system to coordinate and give spatial expression to a wide range of other government priorities. For example, in England the government has made extensive efforts to use the planning system as a major element in its climate change strategy, while in Wales efforts have been made to ensure that planning and development supports health objectives, such as reducing obesity.
- **Local Development Plan** - The draft legislation specifies the development plan documents as: the plan strategy and the local policies plan (LPP) [6(2)]. It is anticipated that the plan strategy will set out the strategic objectives for the plan area. Significantly too, it will require the Council to specify how these objectives will be implemented. The LPP is a follow-on, more detailed, site specific plan for the area. Spatial Planning in England and Wales takes ‘a loose-leaf approach’ known as the Local Development Framework (LDF). The individual development plan documents within this include the Core Strategy (Plan Strategy in NI), as well as other issue

based or thematic documents. Significantly too, the LDF documents can include provision for Area Action Plans (AAPs). The latter allows councils to focus on key areas for coordinated action or change. Normally this might be a regeneration area or a town centre where land acquisition might be needed or where urban design is a key part of place making. In the context of implementing spatial plans at council level in Northern Ireland this might be an important facility, particularly since it has the potential to bring regeneration and spatial planning together to achieve coherent change. Arguably, Area Action Plans would help keep the development plans relevant as they focus on key areas of change. Moreover, this facility would provide regeneration schemes with the statutory status they often lack as well as locating schemes within the broader visionary frame of the community plan and the plan strategy.

- **Adopting the Local Development Plan** - The proposed legislation requires councils to submit every development plan to the Department for independent examination. The plan will then be tested for its 'soundness' [10(5)(b)]. Presumably tests of soundness will be specified in follow-up policy and guidance publications. In relation to the adoption process [12], the Department has the power to direct the council to adopt the plan with or without modifications. In other words, it is not bound by the recommendations of the independent examination. There was some concern in the public consultation that this 'goes against the principle of devolved planning' (2.84).
- **Joint Development Plans** – Two or more councils may agree to prepare joint development plans, however, the Department also has the power to direct councils to prepare joint development plans [18]. In England and Wales such arrangements are entirely voluntary, although the Secretary of State may constitute a joint committee to be the local planning authority. This raises a number of issues.
- **Training & Re-skilling** - Experience from elsewhere suggests that a key to the success of implementing the new legislation and the new system in all its forms is preparatory training and re-skilling for all the key players. For the professional planners, officials and politicians the turn to spatial planning represents a 'substantial shift in thinking and practice requiring what Nadin calls a process of 'learning and unlearning'. This sea change in practice will also impact on all other stakeholders and they too will require an understanding of a new language, a new system and significantly changed practices. In relation to development planning, for example, a spatial approach will require collaborative working across disciplines and across sectors. This is quite different to the technocratic and sometimes narrow approach used in land-use planning. (See also Paper 4 forthcoming).
- **Intra-Government Relationships** - *The new legislation and follow-up policy create a set of government relationships that should be carefully considered.* Effectively the governance of the new system will involve: the new councils; the Department of the Environment (DOE); the Department of Regional Development (DRD); and the Office of the First Minister and Deputy First Minister (OFMDFM). Arguably DRD's role in

putting in place a coherent spatial strategy for the region is vital to ensure that local development plans knit together for wider regional benefit.

- **Implementation** – A key to the success of a new spatial planning system will be its ability to oversee, direct and often lead the implementation process. Indeed, to some extent this is acknowledged in 8(2)(b):- ‘a plan strategy must set out ... its strategic policies for the implementation of (its) objectives. However, a spatial planning approach, in contrast to a land-use planning approach, is tasked with the challenge of integrating and coordinating the spatial investments of other public services. Consequently, this needs strong legislative support.

2 Equivalent arrangements in comparable jurisdictions

As noted earlier, the part of the legislation that deals with local development plans largely replicates the 2004 Planning and Compulsory Purchase Act for England and Wales and the Planning (Scotland) 2006. The shift to spatial planning in these jurisdictions has its origins in the model of planning expressed in the European Spatial Development Perspective (1999, ESDP) as well as being influenced by practices in other English speaking countries (Morphet, J.) (see also Paper 4 forthcoming). In Scotland spatial planning has been embraced at National and City Regional level, but as Morphet notes it would ‘be difficult to argue that there is currently a local system of spatial planning in operation’

The basis of the planning system in the Republic of Ireland is the Planning and Development Act (2000), which has undergone a number of minor amendments in the intervening years, such as new procedures for strategic infrastructure (2006). The Irish Parliament has also passed the Planning and Development (Amendment) Act 2010 that introduces reforms to bring the planning system in line with European legislation and new provision for development plans, to ensure that they are regularly monitored and reviewed and that they take account of a wider set of issues, including housing strategies, population and greenhouse gas emissions.

Within the context of the UK and Ireland, spatial planning has been most developed in England given that it has been in operation there for six years. The teething problems, particularly relating to the major change in ‘culture and practice’ are being addressed in a number of ways that warrant further consideration

3 Contentious Areas

- Under Part 1 (s1) the functions of the Department of the Environment are defined as being to: "formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development". This remains unaltered from previous legislation and underlines the key role of the planning system to regulate land use. This does not encompass the broader function of co-ordination

implied by the shift to spatial planning, which may involve not just coordination of the development of land but also the spatial expression of other areas of policy. This issue also applies to Part 1 (section 1, part 4). Here the Bill sets out the issues that the Department may take into account when preparing plans and while it provides an expanded list of issues from previous legislation, it remains primarily focused on land use matters and does not provide for the broader integrative functions implied by the shift to spatial planning.

- Furthermore, the function of the Department as specified in the Bill implies that the objective of the planning system is to deliver "orderly and consistent development", rather than using the powers over regulating development to secure longer term or more strategic goals, such as sustainable development or the well-being of the Northern Ireland population. In Part 2 (s5) the Bill establishes a duty for development plans "to contribute to the achievement of sustainable development" and this could be incorporated into the functions of the Department to ensure this applies to all planning duties under the Bill.
- A key reason for the development of spatial planning elsewhere is its focus on delivery. In the context of Northern Ireland this will require significant changes, not only for planning practice, where the tradition has been about simply regulating development, but also for other stakeholders who will need to 'buy into' and work with the new model. The concept of 'creating place' which underpins spatial planning requires other sectors such as health, education and housing to submit to a community plan and development plan process that takes a more holistic and integrated view of how people live their lives. The public sector tradition in Northern Ireland, particularly over the last 30-40 years, has been about individual departments and agencies operating within their own discrete areas. A more integrated approach, however, would see spatial planning as the key vehicle for giving expression to communities' spatial objectives for health, education and so on.

ⁱ Department of Communities and Local Government, (2001) Planning: Delivering a Fundamental Change.

ⁱⁱ Department of Communities and Local Government, (2001) Planning: Delivering a Fundamental Change.

ⁱⁱⁱ Planning Service (NI), (2010) Reform of the Planning System in Northern Ireland: Your chance to influence change: Government Response to Public Consultation July – October 2009