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by

Geraint Ellis, Ruth McAreavey, Stephen McKay, Ken Sterrett

(School of Planning, Architecture and Civil Engineering, Queen's University, Belfast)

Planning Bill (3): Community Involvement

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This paper looks at the Community Involvement provisions set out in the Planning Bill. It is one of four papers prepared for the Bill, which follow a common format that highlights: the key issues arising in the Bill; summarises the findings of the public consultation and the Government's response; reviews comparable arrangements in comparable jurisdictions and highlights potential contentious issues that arise.

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Key Points

- The Planning Bill makes provision for **planning responsibilities to be handled by local authorities**, which will increase opportunities for the public to deal directly with elected representatives with decision-making responsibilities.
- It reaffirms the duty to prepare a **Statement of Community Involvement (SCI)** (s.4) and extends this to district councils. It does not make a provision for monitoring or reviewing these statements.
- The Bill provides for **pre-application consultation** (s.27) by applicants for major developments, although this does not specify requirements as much as is proposed in other jurisdictions.
- The Bill provides for a district council to hold a **pre-determination hearing** (s.30) where the views of the applicant and others can be heard.
- The Bill introduces a **duty to respond to consultation** (s.224) on any body undertaking consultations under the legislation.
- The Bill does **not establish a statutory link between local development plans and Community Strategies**, as has been the case where similar approaches to planning have been adopted in other parts of the UK.
- The Department's response to the consultation made a **number of commitments that do not appear in the Bill**, for example a proposal to only allow representations to development plans that are related to testing the soundness or sustainability of the plan, rather than being "objection-based".
- The Department have decided not to proceed with the introduction of some form of **third party right of appeal**, despite being a prominent issue during the consultation phase.
- The Bill does not take into account a number of **other community involvement initiatives** taken forward in other parts of the UK including:
 - Neighbourhood Development Orders;
 - Good Neighbour Agreements;
 - Specified minimum requirements for pre-application consultation by applicants;
 - Availability of information on how planning applications have been dealt with.
 - Securing local benefits from development through planning obligations or a Community Infrastructure Levy.
- Many of the details of the new provisions are to be provided in **supplementary guidance or legislation**.
- The **EQIA for planning reform** make a number of commitments that are not reflected in the Planning Bill.

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1 Introduction

This briefing paper is the third of a set of four prepared for the Committee 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 reforming the way in which communities can engage with the planning system.

This Bill makes the initial statutory provision for spatial planning 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 the broad arrangements for spatial planning, including how local communities can become involved. Additional written guidance and support should also be forthcoming.

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, politicians and communities. Arguably though, the benefits of these changes potentially far outweigh the costs of major changes in culture and practice.

This paper is the third 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

In this paper:

Section 1: identifies the key issues arising from the Bill in respect to community engagement;

Section 2: provides an analysis of the key themes;

Section 3: reviews equivalent arrangements in comparable jurisdictions; and

Section 4: identifies contentious issues which may require further scrutiny.

Members of the Assembly may find it 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>

2 Overview of themes

Community involvement can be defined as being the processes through which planning provides “opportunities for people, irrespective of age, sex, ability, ethnicity or background, business, the voluntary sector and others to make their views known and have their say in how their community is planned and developed. Community involvement in planning should not be a reactive, tick-box, process. It should enable the local community to say what sort of place they want to live in at a stage when this can make a difference”¹

In the consultation documents for planning reform, the Department noted that one of its objectives was to create a planning system that “allows for full and open consultation and actively engages communities”. Indeed, effective community involvement is a critical element in any planning system and over the past decades there have been major attempts to improve this aspect of the planning system, with statutory defined opportunities for a whole range of stakeholders to make representations on development plans and planning applications. Effective involvement results in outcomes that better reflect the aspirations of the wider community, improves the quality and efficiency of decisions, promotes social cohesion, raises awareness of all involved about the needs of communities and the business sector, and it is also critical in raising the public’s confidence in the planning system. There are a number of key barriers to community involvement that include the costs of participation for both stakeholders and the planning authority, the complexity of some issues, the technical language of planning and problems of identifying and reaching all the relevant groups in society. Over recent years there has also been increasing concern over delays caused by the planning system, which can sometimes be accentuated as a result of participatory procedures.

The draft Planning Bill reaffirms many of the previous opportunities for community involvement, such as the need for planning authorities to produce a Statement of Community Involvement. Most notably, it provides for the transfer of many planning powers to district

¹ Taken from Department of Communities and Local Government, (2004) Community Involvement in Planning: the Government’s Objectives”.

councils, where locally elected politicians who understand the concerns of local communities will be making the majority of planning decisions and shaping the planning policy for their council areas.

The Bill also introduces a number of new provisions for public consultation, including:

- extending the duty to produce **Statements of Community Involvement** to district councils (s.4).
- introducing the requirement for **pre-application consultation** (s.27) by applicants for major developments. Any prospective applicant must provide 12 weeks notice to a district council that such an application is to be made, must specify who the applicant intends to consult with and the nature of that consultation. A report of the pre-application consultation should be submitted before the application is made.
- Providing for **pre-determination hearings** (s.30) where the “applicant and any person so prescribed” can appear and be heard by a committee for the council. The arrangements for this and any rights of attendance will be determined “as the council considers appropriate”. The type of development to which this will apply will be subject to specification in regulation or a development order.
- The introduction of **a duty to respond to consultation** (s.224) on any person or body which exercises functions under the planning legislation. This specifies that “a substantive response to any consultation” should be given. The Department may specify the procedure to be followed under this section.

As noted in section 3 below, the Bill does not appear to provide for all the issues related to community involvement that the Department committed to in its response to consultation on planning reform and the details of many of the new provisions will be provided in future clarification and guidance. These issues and others prompted by what is included or omitted from the Bill are discussed in more detail under section 5, Contentious Issues.

It should also be noted that most of the issues raised in the EQIA undertaken for the planning reform process relate to community involvement and a number of issues are discussed in section 5.9 below.

3 Consultation responses

The arrangements over community involvement were the most common and strongest voiced issues raised during the public consultation on planning reform. The Department has issued a detailed response², in some cases amending its previous position in the light of the observations made. There was a mixed response to many of the issues raised during the consultation and as a consequence these highlight issues that may require more detailed scrutiny during the legislative process. A detailed report of the consultation is available³, and for the purpose of this paper, the key issues relating to community involvement that the Committee may wish to consider are:

- The Department noted that it intended to make a statutory link between community plans and local development plans. This is not included in the Bill.

² As noted in The Planning Service (2010) *Reform of the Planning System in Northern Ireland: Your chance to influence change; Government Response to Public Consultation July – October 2009*, March 2010

³ 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

- The Department noted that it intended to change the first stage of a development plans, from an “issues paper” to a “preferred options” paper.
- The Department noted that it intended to change the basis of examining development plans from an objection based one to one which tests the soundness and sustainability of the plans and that only those representations that contribute to this test will be heard.
- The Department noted that it intended to specify that “any consultation engages as much of the affected community as possible”. This has not been substantially detailed compared to the Localism Bill recently introduced in England.
- The Department noted that it intended to introduce a power that would allow the PAC to award costs where a party has been put to unnecessary expense and where the PAC has established that a party has acted unreasonably. (Paper 2 deals with this in more detail).
- The issue of third party planning appeals was commonly raised during the consultation with a majority of respondents supporting their introduction. The Department has noted that it does not wish to proceed with this at this time.

4 Comparisons and lessons from elsewhere

Other comparable jurisdictions that broadly share the features of the Northern Ireland Planning System (i.e. England, Wales, Scotland and the Republic of Ireland) have all been active in reforming their planning systems during the last seven years. Many of these reforms have featured initiatives related to community involvement. Some of these are noted below:

England and Wales:

The Planning and Compulsory Purchase Act (2004) introduced the spatial planning approach to England and Wales, including major revisions to the development plan system. This was accompanied by a renewed emphasis on delivery of planning outcomes and on community engagement. This included the publication of specific guidance (*Community Involvement in Planning: The Government’s Objectives*) which explained how planning related to other forms of governance, set out operational principles, specified requirements for Statements of Community Involvement and provided details of service delivery, including a planning delivery grant, support for Planning Aid and the Planning Advisory Service.

The current Coalition government is in the process of reviewing the previous planning legislation and policy. It published its *Decentralisation and Localism Bill* in December 2010 which covered a number of areas of policy that may affect how the public engages with local authorities and government, such as provision for local referendum and new powers of competency for local authorities, but also included specific reforms relating to community involvement with the planning system. This includes:

- Provision for neighbourhood development plans and order.
- Increased requirements for pre-application consultation.

Scotland:

Planning etc.(Scotland) Act 2006 made a range of amendments to the main 1997 legislation and in respect to community engagement introduces the following provisions:

- A duty on a planning authority to make public information as to how planning applications have been dealt with, including any documents taken into account, the

material considerations upon which the decision was based and any pre-application consultation report.

- Provision of Good Neighbour Agreements between developers/landowners and community organisations to regulate activities on a site.

The Republic of Ireland:

The planning system of the Republic of Ireland is broadly similar to that of Northern Ireland, with key differences being that local authority planners have a greater range of executive powers and that third parties have a right to initiate planning appeals in addition to applicants. Third party appeals act as a way in which individuals and communities engage with planning decisions and as a consequence, other opportunities for participation are not as extensive as currently available in Northern Ireland. The main planning law is the Planning and Development Act 2000, which has been subject to a number of amendments, most recently through the Planning and Development (Amendment) Act 2010. This did not introduce any major provisions related to community consultation, although it does make minor changes to the way revisions to development plans are advertised, including specifically inviting observations related to the interests of children.

5 Contentious Areas

The following section of the paper will highlight some of the areas that raised most interest in terms of responses from the consultation, and will consider the areas that are likely to raise further questions

5.1. Opportunities for securing further community involvement

The consultation document for planning reform noted that one of the objectives was to create a planning system that “allows full and open consultation and actively engages communities”. However the Bill provides for only relatively minor improvements in consultation from the previous system and largely remains a reactive rather than proactive system, relying on stakeholders and members of the public to respond to initiatives of the Department and district council. There is now widespread experience of innovative practices in community involvement and members may wish to review to what extent these have been taken into account and what other opportunities there may be for securing this stated aim of planning reform.

5.2. Statutory requirements for Statements of Community Involvement.

Statements of Community Involvement (SCI) were introduced as a duty on the Department in the Planning Reform (NI) Order 2006. The Planning Bill extends this to district councils. Other jurisdictions have set out detailed guidance on what these statements should include, yet this is currently undefined in the case of Northern Ireland. Furthermore, the Planning Bill does not make any requirements on the Department or district councils to monitor or review SCIs.

The Bill also provides for SCIs to be prepared in relation to development plans and development management (Parts 2 and 3), but not other provisions in the Bill, including conservation, trees etc. There may be a case for establishing SCIs for all provisions under

the Bill. The section 5.9 below notes that SCIs could also be better aligned with the equality duties of the Department and the district councils.

5.3. Strengthened pre-application consultation procedure.

As in section 2 above, the Planning Bill (s.27) makes provision to require applicants for major developments to undertake pre-application consultation. This does not detail the requirements on applicants on the form of the consultation nor the response they should take subsequent to the consultation. The recently published Localism Bill responds to the English experience of pre-consultation procedures and proposes higher demands for pre-applications consultation. This includes:

- Provision for this to be applied to any development, not just those considered “major”;
- Requires that the proposed application should be publicized “in such a manner as the person reasonably considers it likely to bring the proposed application to the attention of a majority of persons who live at, or otherwise occupy premises in the vicinity of the land”;
- Defines what the publicity should cover (e.g. timetable for consultation and how to make representations);
- Proposes a duty to take account of the responses to consultation.

5.4 Pre-determination Hearings

As noted above, the Planning Bill provides for councils to hold pre-determination hearings on major developments. The Bill allows discretion on behalf of the council to determine who should be permitted to address the hearing and who can be in attendance.

5.5 Third party appeals

Third party appeals were a common issue raised during the consultation for planning reform. The Department has noted that “there does not appear to be any immediate compelling reason to proceed in the public interest towards making provision for third party appeals in the current round of planning reform proposals”.

Third party rights of appeal allow other parties other than the applicant to initiate an appeal on a planning decision. This has been a long standing feature of the planning system in the Irish Republic, where anyone who has made an observation on the original planning application can initiate an appeal on the outcome of a planning application, including those awarded permission.

There a number of models of third party appeals, from those of a relatively unrestricted nature, such as those available in the Republic of Ireland to more limited rights of appeal, where it may be restricted to particular cases (such as where a decision departs form a development plan or those dealing with planning permission for district councils themselves) or extend the right only to particular parties (such as statutory agencies or advocacy organisations such as community groups or environmental NGOs).

5.6 Securing broader community benefits from development

The Bill reaffirms existing powers of the Department to enter into planning agreements, which can be used to facilitate development through the developer payments, improvements to infrastructure etc. This provision is rarely used in Northern Ireland compared to other jurisdictions. The consultation on planning reform did raise the possibility of introducing a new system of developer contributions and this attracted wide qualified support. In its response to the consultation, the Department has noted that this issue is not intrinsic to planning reform and that it is an issue to be dealt with by the Executive, where a coordinated response can be provided.

This is in contrast to the situation in England and Wales, where planning legislation has been used to introduce a Community Infrastructure Levy⁴ (CIL). This will allow local planning authorities to gather a contribution for local infrastructure (such as water supply, transport, schools, health centres, flood defences, open spaces etc) according to the size of new development being undertaken. In the Republic of Ireland developers of major housing schemes have been obliged to provide a proportion of affordable housing.

5.7 Learning from other jurisdictions

While Planning Reform has a goal of securing a planning system that actively engages communities, the Department has decided not to include some interesting initiatives related to communities introduced in other comparable jurisdictions. A number of these have been mentioned above (such as third party appeals and pre-application consultation), but this section further highlights a number of other provisions that may want to be considered by the Assembly, such as:

5.7.1 Neighbourhood Development Plans and Neighbourhood Development Orders

The Decentralism and Localism Bill (England) published in December 2010 aimed to decentralise government functions to local communities and citizens and includes a number of provisions related to planning. This includes the introduction of Neighbourhood Development Plans, which local planning authorities will be obliged to produce if more than 50% of residents vote for one in a local referendum. The Bill also makes provision for Neighbourhood Development Orders, based on the Neighbourhood Development Plan that will allow communities to agree a schedule of development for which planning permission will not be required. The Bill also allows for resources to be made available to support neighbourhood planning.

5.7.2 Good Neighbour Agreements

The Planning (Scotland) Act 2006 (s.24) provides for community organisations to “enter into an obligation governing operations or activities relating to the development or use of land”. These function in much the same way as the planning agreements provided under the Planning Bill (s75), but provides for such agreements to be made directly between local communities and developers and not just developers and the planning authority.

⁴ This was introduced in the 2008 Planning Act, for details see *The Community Infrastructure Levy*, <http://www.communities.gov.uk/documents/planningandbuilding/pdf/communityinfrastructurelevy.pdf>

5.7.3 Public availability of information as to how planning applications have been dealt with

The Planning (Scotland) Act 2006 (s.12) provides a duty to make publicly available the information on how a particular application has been dealt with. This was aimed to increase the transparency of decision making and lists information such as the list of documents considered, the material considerations taken into account and any pre-application consultation report.

5.8. The need for further guidance or subordinate legislation

The Government's response to consultation noted that further clarification, legislation or guidance was needed in at least the following areas related to community involvement:

- Resources, time needed and size of Statements of Community Involvement;
- Submission of representations and counter-representations on a development plan;
- The tests of soundness and sustainability of development plans;
- Requirements of representations on developments in line with tests of soundness and sustainability of development plans;
- Common guidance on procedural rules for conducting hearings and inquires for regionally significant applications;
- Best practice advice to indicate when it might be appropriate to hold pre-determination hearings when not a mandatory requirement;
- When it will be appropriate to award costs in planning appeals when one party are seen to be acting unreasonably;

It is likely that many other areas relating to new provisions introduced in this legislation will also need further clarification prior to commencement. Other papers produced on the Planning Bill have also highlighted the need for further guidance and clarification. These note the importance of establishing such guidance in parallel with the legislation and this similarly applies to providing details on how the community can be fully involved in the planning system. It should be noted, for example, that at the time of the major planning reform in England and Wales the office of the Deputy Prime Minister issued Guidance (*Community Involvement in Planning: The Government's Objectives*)⁵ on how it aims to involve the public in planning.

5.9. Equality provisions

Almost all the issues raised in the Equality Impact Statement for this Bill relate to the way in which different groups engage with the planning system and should therefore be considered under the provisions for community involvement. A number of issues may be highlighted here:

- The EQIA notes that there is a poor evidence base for evaluating the equality impacts of the planning system and commits the Department to developing a Monitoring strategy to rectify this. There is a case that this should be put on a statutory basis, extended to district councils and included in the Bill, for example under the requirements of the Statement of Community Involvement.

⁵ See <http://www.communities.gov.uk/documents/planningandbuilding/pdf/147588.pdf>

- The EQIA notes that in fulfilling its equality duties, the Department works closely with organisations such as Community Places and Disability Action. During times of reductions in public sector spending financial support for organisations such as these is likely to come under pressure, which in turn may lead to compromises in the fulfilment of equality duties.
- The EQIA notes that in relation to Development Management that “*The proposals will also encourage increased community engagement at an earlier stage in the process and, as such, facilitate the inclusion and consideration of the views of communities with the greatest social need who might otherwise be excluded.*”

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