Northern Ireland Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Planning Bill: Pre-legislative Briefing

10 January 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mrs Dolores Kelly
Mr Francie Molloy
Lord Maurice Morrow of Clogher Valley
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Ms Irene Kennedy	Department of the Environment
Mr Angus Kerr	Department of the Environment
Mr Kevin McKeever	Department of the Environment

The Chairperson: I welcome Angus Kerr, director of planning policy division; Irene Kennedy from planning; and Kevin McKeever. Thank you very much for coming. Happy new year to you all. Will you give us a presentation of five or 10 minutes? Afterwards, we will ask questions. Thank you.

Mr Angus Kerr (Department of the Environment): Thank you very much, Chair. First, I want to apologise because I have just recovered from a rather nasty bout of flu. You can probably hear it in my voice. I will be croaking a little too much today. Apologies for that. It probably sounds worse to me than it does to you.

Thank you very much for inviting us back to the Committee. You will remember that on 21 June 2012, we gave you a short briefing on the Bill. As the Bill is moving forward again, it is probably helpful for us to update you. The latest position is that the Minister intends to introduce the Bill to the Assembly on Monday 14 January 2013. You will recall that the main purpose of the Bill is, essentially, to accelerate the introduction of a number of the much-needed reforms to the planning system that are already in the Planning Act (Northern Ireland) 2011, which went through the previous Assembly, ahead of the transfer of planning powers to councils. So the bulk of the reforms are not new. As many members will recall, the policy has already been established and was previously subject to Committee and Assembly scrutiny. As you know, the 2011 Act modernised the planning system in order to transfer powers. The Act reflects the two-tier planning system to be run by the Department and local councils. The time frame for the transfer of those powers is 2015.

The Bill will reproduce provisions in the 2011 Act and bring them forward as amendments to the Planning (Northern Ireland) Order 1991. So that will work as an interim measure that will allow the reforms to be implemented sooner and in advance of the transfer of planning powers. Therefore, it

provides an opportunity to transfer a system that councils, planners, developers and, of course, the public will already be using and have had a chance to test, see how it works and get a better and fuller understanding of it rather than introducing all the changes at the same time as we introduce the transfer of the function.

In addition, the Bill contains a couple of newer elements that were not part of the 2011 Act. One of these, which we highlighted to the Committee in June, relates to promoting good design. The other additional fundamental issue is that the Minister has decided to introduce proposals that aim to underpin the role of planning in promoting economic development. I am here today with Irene Kennedy and Kevin McKeever. Irene will quickly go through the main elements of the Bill and also talk in a little more detail about those new bits.

Ms Irene Kennedy (Department of the Environment): Good morning, Chair and members. The Bill has 28 clauses and no schedules. Twenty-four of the clauses make amendments to the 1991 order. They correspond with provisions reforming planning law in the 2011 Act but have not yet been brought into operation. Clause 25 makes provision for the Department to make an order repealing those clauses when the relevant sections of the 2011 Act come into operation and provisions of the 1991 order, which are amended by this Bill, are repealed. That is the mechanism.

Three clauses make amendments to the 2011 Act. There are no changes to the development plan system in the Bill. It is the Department's view that councils are best placed to deliver the new generation of development plans. It is, therefore, appropriate that the comprehensive reforms of the development plan system that were discussed in the lead-up to the 2011 Act take effect when the transfer of planning powers makes its way to councils.

I have outlined the main established reforms that we carried forward from the 2011 Act through amendments to the 1991 order. Those are listed in the synopsis that we provided to the Committee. First, the proposed provisions will bring about faster processing of planning applications through a number of reforms, such as the option to appoint persons other than the Planning Appeals Commission to conduct inquiries and hearings into major planning applications.

To speed up decision-making, a duty will be placed on statutory consultees to provide substantive response consultations on applications within a prescribed time frame. The Bill contains enabling powers to allow publicity arrangements for planning and listed building applications to be set out in subordinate as opposed to primary legislation. That will provide flexibility to choose from a range of communication methods to provide information to the public. In addition, the Bill contains provision to allow the Department to approve non-material changes to an existing planning permission without the applicant having to take the time or go to the expense of submitting a further application.

The proposed provisions provide simpler and tougher enforcement by introducing fixed penalty notices for failure to comply with an enforcement notice or breach of condition notice; clarification on the requirement for consent or planning permission to partially demolish any part of an unlisted building; and increased penalties for a range of planning offences. Penalties for failure to comply with an enforcement notice or stop notice, for example, will be raised from £30,000 to £100,000 on summary conviction. The increased fines were sought by the previous Committee during consideration of the 2011 Bill. They were subsequently tabled and discussed during that Bill's formal Consideration Stage. The Bill also provides for multiple fees to be charged for retrospective planning applications.

A number of measures are carried forward to strengthen environmental aspects of planning. Those include amending the Department of the Environment's (DOE) sustainable development duty to require the Department to carry out its policy and plan-making functions with the objective of furthering sustainable development and promoting or improving well-being. It requires that, where possible, proposed development in a conservation area should enhance the character and appearance of that area. The Department's consent will also be required for the felling of, or works to, trees covered by a tree preservation order that are dying because dying trees are no longer exempt.

Faster and fairer appeals are proposed through reducing the period during which an applicant can submit an appeal against a planning decision from six months to four months. The Bill introduces a period for a certificate of lawful use or development appeals and powers to restrict the introduction of new material at appeals. It also allows the Planning Appeals Commission to award costs in planning appeals in which the unreasonable behaviour of one party has left another out of pocket. The proposals will enhance community involvement through the introduction of the requirement for developers to carry out statutory pre-application community consultation for major applications. The

Bill also requires the Department to prepare and publish, within one year, a statement of community involvement for its functions.

I turn now to the new reforms that the Department proposes to make to both the 1991 order and the 2011 Act. In June, we advised the Committee that the Bill would contain a minor amendment requiring particular attention to be given to the desirability of achieving good design in delivering policy and plan-making functions. To support that, the Department also intends to consult, in coming months, on an urban stewardship and design guide and on subordinate legislation to require certain planning applications and listed building consent applications to be accompanied by design and access statements.

Since we briefed the Committee in June and following discussions at the Executive, the Minister has decided to bring forward additional proposals to underpin the role of planning in promoting economic development. Those proposals are included as amendments to both the 1991 order and the 2011 Planning Act. They will continue to apply once the transfer of planning powers to councils has taken place. The new proposals will require the Department to formulate and co-ordinate planning policy with the additional objective of promoting economic development. A similar requirement will be placed on the Department, the council, the Planning Appeals Commission or the independent examiner in carrying out any development plan functions. The Department and councils, in determining any application for planning permission, will be required to have regard to considerations relating to the economic advantages or disadvantages likely to result from granting or refusing planning permission.

The Committee and the Executive recognise that the planning system has a key role to play in supporting economic recovery. The Executive's Programme for Government and the economic strategy both recognise the importance of planning in rebuilding and rebalancing the economy. In the current economic climate, it is important that the planning system adapts flexibly and quickly to the many challenges facing the economy. Proposals that may bring investment should be processed as quickly as possible. The planning system should be more efficient, give greater certainty to developers and process applications faster. This approach acknowledges the role that planning has to play in delivering sustainable development and growing the economy. Good planning and quick decisions are key to economic growth and new jobs.

Further elaboration will be set out in the Department's forthcoming single planning policy statement. It will deal with the core principles underlying the reformed planning system and address how economic considerations are to be taken into account along with social and environmental considerations. It will assert the purpose and role of planning, including in a sustainable development context.

So, Chair, that is what is included in the Bill, what we discussed in June and what the new additions are.

The Chairperson: Thank you very much. I very much support the addition on good design. Some architects in Northern Ireland will tell you that some of our buildings are not good enough, shall I say. PPS 25, which was drafted by the Department, was specifically about economic development, so why are we adding this now? This is similar to PPS 25.

Mr Kerr: It was PPS 24, which is the one that was withdrawn. There is a difference. PPS 24 dealt with the amount of weight that should be given to economic considerations in planning decisions. This aspect of the change to the legislation is only establishing economic development as a statutory material consideration in the determination of planning applications. It is not saying that it should be given greater weight and could be the determining weight, and so forth, in making planning decisions, as PPS 24 did. The proposed amendment simply states that economic development is a material planning consideration in the determination of planning applications. There is a subtle difference, but it is a different type of measure. One is a legislative measure, and the other is a policy measure. As Irene mentioned, when we come to develop this through the single planning policy statement, we may want to get into questions of how much weight various considerations should be given in different circumstances. How do we differentiate between environmental and economic considerations, and so on? That is more of a policy issue than a statutory requirement or an identification of what the considerations are. That is what this is doing in the legislation.

The Chairperson: There is a reference to whether refusal would have an economic disadvantage. Any potential disadvantage to economic development would have to be considered. Does that put a lot of pressure on the planners simply to say yes to all developments?

Mr Kerr: I see this as clarifying for planners that economic advantages and disadvantages are a material consideration to be taken into account when approving or refusing a planning application.

The Chairperson: How material is that? That is not about massing, sites or traffic congestion.

Mr Kerr: In the philosophical debates about this all the way along, it was said that economic considerations have always been a material consideration in dealing with planning applications. Therefore, there was a debate about whether this was necessary. That is a separate issue, but we now have it in front of us, and it clarifies something that most of us around this table knew: economic considerations are and will continue to be material in deciding planning applications. You only have to look at the recent decisions that people will be aware of, such as Runkerry, Athletic Stores and major retail applications. If you read all of the material associated with those, you will see that they deal with the weight given to economic considerations in coming to whatever decision was made on those planning applications. So that is how it has been in making planning decisions for many years.

The Chairperson: Why do you have to add a clause with a particular emphasis on economic development?

Mr Kerr: It clarifies the position and gives economic development the statutory weight of a material planning consideration, and there can be no doubt about that. So it gives economic development a status. I suppose that, ultimately, legislation gives it the highest status in policy. If this goes forward, it absolutely guarantees the establishment in Northern Ireland of economic development as a material consideration in planning decisions.

Mr Boylan: Thank you very much for your presentation, and happy new year to you. We have finally got round to the Planning Bill. I will pick up on the point about the weight being given to economic development. It is about time that this was clarified because, otherwise, you cannot shout about growing the economy and everything else. This is all about appropriate and proper development. In the absence of area plans, some of which are on hold and some of which are in draft form, I think that we need something. Is this coming through as part of the Bill, or is it coming through separately?

Ms I Kennedy: It is part of the Bill.

Mr Boylan: I add my support to that. We need clarification on what should and should not be allowed in terms of economic weight.

I have some particular points to raise, starting with the duty to respond. Many planning applications have been held up by certain bodies. How do you propose to go about tackling that? Obviously, you will set out a time frame. If those bodies were not to respond to that, would they be subject to a penalty of any description?

Mr Kerr: Subordinate legislation will be needed to explain who the statutory consultees are, what the precise timescales are and to deal with the issue of the penalty, which still needs to be decided. There are options for a light-touch approach or more stringent action against statutory consultees whose responses are late. The performance of those who are not statutory consultees now but who will be the statutory consultees of the future has been improving quite substantially, which gives us cause for encouragement when it comes to Roads Service, the NIEA, and so on. They have been responding in good time and have, more or less, been meeting their targets. A lot of recent work has been starting to focus on the quality and type of responses that we get back, whether they are helpful and whether they are the right type of response so that we can get the best planning decision.

Mr Boylan: Councils need to have confidence that this will take place. I will not mention any consultees, but I know from experience how long it can take for a response to come in. I agree that we need to look at penalties. Delay not only holds up the whole system but can impact on local authorities. If we are to be strong in introducing penalties, let us make sure that they will work.

My other query is to do with additional material being provided. I cannot see where that is in the Bill just now. Should we not be looking at creating a situation whereby when someone is making an application, the material that they are supposed to produce is clearly identified? That would mean that we would not be waiting for extra material or other information. That clearly holds up the process. Do we propose to deal with that in subordinate legislation as well?

Mr Kerr: Is that in relation to the appeal process?

Mr Boylan: Yes.

Ms I Kennedy: There is a provision that deals with appeals and materials. It will mean that the ability to introduce new material is prevented. There is a restriction on that. The decision made at an appeal should be made on the basis of the information provided when the decision on the application was made. That is to prevent —

Mr Boylan: So that gap is now closed? That has been an issue.

Ms I Kennedy: Yes.

Mr Boylan: I just could not think where it was in the Bill. I remember that coming up in the debate. Clearly, that is an issue that we need to look at.

Ms I Kennedy: That is carried forward from the 2011 Act. Bear with me, and I will tell you where the clause is.

Mr Boylan: I could not see it. I just wanted clarification because, even yet, additional material is being provided. We need to look at that at the start of the process.

Ms I Kennedy: It is clause 12.

Mr Boylan: I want to ask about diversification. I have seen a lot of applications, and we are not clear on what we will allow under diversification. What innovations, for example, will be allowed? I am talking in general about what is happening in rural areas. I would like to see what we will introduce or what is in the Bill to direct that. I know that a lot of light engineering business applications have come through from people who have moved away from agricultural practices. That is the way forward, so I would like to know what is in the Bill or how we should look at that.

Mr Kerr: That issue will probably be dealt with most effectively on the policy side, particularly when we bring the single policy statement to the Committee. The Minister has looked at that area and considered it as part of his ongoing review of PPS 21. A number of people have raised that as a problem or an issue. There have been discussions about that and some training for staff on a more flexible approach to what can constitute diversification, along with some other aspects of PPS 21.

Mr Boylan: I have one final point, Chair. There was a particular complaint about alterations and the fact that people have not complied with the plans that they submitted, especially in and around Belfast. Has a role for building control officers been considered?

Mr Kerr: That is a key area, particularly for 2015 and beyond following the transfer of planning powers to councils. I see that as one of the many benefits of transferring planning to councils because it brings it right in with some of the other existing council functions, such as building control. There is an attempt to liaise as closely as possible with Building Control now, but the transfer of planning powers to councils offers a really good opportunity in the future to make it much more systematic in councils, which will be responsible for planning decisions. Currently, there is no systematic way in which officers go back out and check those planning decisions, whereas, if a council has responsibility for building control, part of its business is to go out two or three times and look at the particular proposals. That is where those elements are tied together to make that very important link.

The Chairperson: Really, we are just progressing part of the 2011 Act. Then, by 2015, the rest will be enforced.

Mr Kerr: That is right.

The Chairperson: Will it automatically go through the Assembly again?

Mr Kerr: Someone can keep me right here. These changes will be repealed because they will become irrelevant after the transfer. The Planning Act, which, as you know, is already through, will

come into effect in 2015, and there will be a raft of subordinate legislation, which we will talk to you about in the coming months and years.

The Chairperson: For this to be beneficial, the timing is important. If we drag this on, it will not be enforced long before the power is handed over to councils.

Mr Kerr: Absolutely. I am glad that you raised that because we want to emphasis to the Committee that the faster that we introduce this, the more benefit there will be from what everyone can learn from it.

The Chairperson: Do we have a timetable for Second Stage?

The Committee Clerk: It is 22 January.

Mr Boylan: The reason why I asked some of my questions is that the information needs to get down to councils now. Councils need to find out fairly quickly what is coming down the tracks. I know that we plan on putting this on the agenda for next week, but how soon can councils be briefed on it?

Mr Kerr: We already work closely with councils as part of the project to transfer planning. It is part of the work of my division in DOE. There is a 15- or 16-strand project, which we are working through a number of committees, and so on, with local government. One of those strands is legislative, so we have already been talking to them about this, and we will continue to talk to them. Councils are quite supportive of this approach because it gives them an opportunity to test and trial some of the changes before everything is thrust upon them in 2015, although they recognise the challenges, as do we. It is a big task. It is a huge change management programme in a short period.

Mrs D Kelly: I welcome many of the planning reforms, but I would like clarification on some of your introductory remarks. You may be aware of a case in the Craigavon area that has been to the High Court. It relates to building in a green belt area, and enforcement costs have been applied. As I understand it, further applications have been lodged for the same site, so those are vexatious planning applications. Will the Bill deal with that type of action?

Mr Kerr: The Bill contains measures on repeat applications. Do you want to handle that one, Irene?

Ms I Kennedy: Yes. There is a provision in the Bill, but provision is already in place for the Department to decline to determine an application if it is for a similar development on the same site. We have expanded on that to deal with cases in which an enforcement action is under way. Sometimes, a site or development may change, but if the application is for the same development on the same site and is made within two years of the last decision, it should be open to the local planning office to decline to determine it.

Mrs D Kelly: I will have to check that out.

I have one other point. The explanatory memorandum refers to:

> *"multiple fees for retrospective planning applications."*

What does that mean?

Ms I Kennedy: If a retrospective application came in, we would, through subordinate legislation, apply a higher, premium fee. The level would have to be determined through legislation, but it could be two or three times the amount the applicant would have paid had the application been submitted in a timely manner.

Mrs D Kelly: OK. Thank you.

Lord Morrow: Clause 5 deals with pre-application community consultation. The proposed legislation states:

> *"A period of at least 12 weeks must elapse between giving the notice and submitting any such application."*

Waiting for 12 weeks before submitting the application does not sound like an efficient system. What priority or attention will preliminary applications be given? In my area, if someone submitted an application that was deemed to be preliminary, I do not think that the planners would give it priority. I am not criticising them for that, because they should give priority to the actual application. However, clause 5 states that, in fact, a pre-application must be submitted before the formal application, but that cannot be submitted until at least 12 weeks have elapsed since the pre-application. Is that efficiency at its best?

Mr Kerr: The purpose of that is to ensure that there is pre-application community consultation. In other words, there must be consultation with the community on the proposal before it becomes a formal application. It is to make sure that developers undertake proper consultation for at least a period of 12 weeks. The clock should not have started for the formal application at that stage; the clock should start when that application is received. It should then be dealt with, we would argue, more quickly, because it has gone through a sensible and rigorous local community consultation. So instead of the local community being hit with an application out of nowhere and then objecting to it and becoming very annoyed and worked up, they will know all about a developer's application. The community will already have had discussions with the developer, and the developer will, we hope, have amended the application to try to reflect the local community's views and wishes.

Lord Morrow: Thank you for that reply.

Will this Bill also ensure that we do not have bad planning? For instance, I am aware of some housing developments with no public services, and yet people are living in houses there. Will the new Planning Bill ensure that we do not have a repeat of that sort of activity?

Mr Kerr: That does not sound like something that we should have now or after the Bill.

Lord Morrow: The point is that we do.

Mr Kerr: Certainly, those sorts of issues should be dealt with through any application that comes through these proposals. We hope that the pre-application community consultation will afford an opportunity to identify such issues right at the start, or very early on, because statutory consultees should be involved in that process.

Lord Morrow: Will there be a continuation of neighbourhood notification? I know that it is not compulsory, but I think that it is still a useful aspect of planning.

Mr Kerr: Yes. We are looking at that area to determine whether it is the best way of carrying out the advertisement arrangements associated with planning applications or whether other options could come forward through subordinate legislation.

Lord Morrow: Are there any proposals to extend the length of time from the granting of planning approval to being required to commence work? Will people have to go back for renewal if the scheme does not start within a period of three, or maybe it is five, years? In the present economic climate, it is, perhaps, not practical for that to happen. Does the new Bill make any provision for that without requiring a complete resubmission, going through the whole process again and incurring a further very costly fee?

Mr Kerr: Nothing in the Bill, as currently drafted, deals with that.

Lord Morrow: Would there be any merit in looking at that?

Mr Kerr: Yes, an ongoing fees and funding review is trying to look at some of those issues. It relates more to a reduction in fee for a situation in which people submit a new application. We hope to introduce a consultation on that very soon.

Lord Morrow: I suspect that, in many cases, banks are pushing applicants who have got planning approval because they have not commenced work. However, they must keep the planning approval alive. They cannot afford to lose planning on the site, and they can barely afford to renew it, so they are caught in a catch-22 situation. I think that the new Bill should look at such scenarios. Perhaps an

extension of the planning approval time should be considered. I know that it cannot run on ad infinitum, and I do not advocate that it should. However, that aspect of planning must be re-examined.

The Chairperson: Given the economic climate, I agree. Cathal, do you want to jump in?

Mr Boylan: Previously, outline planning permission could be renewed. It might be appropriate to look at something like that.

The Chairperson: I understand that community involvement is required for major development only. It is not for your next-door neighbour's extension.

Mr Kerr: That is correct.

The Chairperson: What would you identify as major development requiring community consultation?

Mr Kerr: That is a good question. We need to establish that, and it will be established through subordinate legislation. It applies to development. A balance must be struck between the risk of slowing down the planning system by applying something such as this to more minor development, for which we get a lot of applications, and applying it to development that can maximise the benefit that a particular approach gives to the community. So it looks at proposals of a reasonably significant size. I suppose, in housing, we are talking about 50 houses, or possibly more. None of this is settled yet, but it is not meant to focus on smaller applications. It is for those that will make a difference to the community and in which the community will be very interested.

Mr Molloy: Thank you for your presentation. At present, the Minister can intervene and take planning applications out of the line. Will that power remain with the Minister when planning is devolved to local councils?

Mr Kerr: Once planning is devolved to local councils, the Minister will have powers of intervention across the whole piece. He will have power to intervene in planning decisions and call-in powers for applications and development plans. That is the same as the situation in the other two-tier jurisdictions in these islands. They all have those powers. They are not used very often in the other jurisdictions, but the powers are there.

Mr Molloy: The Minister here seems to use them selectively. Instead of encouraging economic development, he sometimes discourages it. Is there a means of dealing with that situation to give clients an opportunity to appeal to move a situation forward?

Mr Kerr: At present, there is no obvious need for call-in or intervention powers for the Minister, because the Minister is responsible for all of the decisions. Essentially, he gets involved in all planning application decisions.

Mr Molloy: Yes, but he takes some applications out of the line and allows the planners to deal with others. I am talking about that type of situation.

Mr Kerr: In the future?

Mr Molloy: Yes.

Mr Kerr: The facility for that to carry on in future will be there. There will be a legislative facility for that to take place. There would need to be reasons for it.

Mr Molloy: We are talking about consultees having to respond within a certain time. There is also the need for the Minister, in that type of situation, to have to release within a certain timescale because, at the present time, it is an open door; he can hold them on the desk for as long as he likes. The developer, in that situation, needs the opportunity to be able to push for a decision.

Mr Kerr: Developers have the opportunity of a non-determination appeal if they so wish. That would be a facility that they could use — *[Inaudible due to mobile phone interference.]*

Mrs D Kelly: Somebody's phone is going.

Mr Molloy: Beam me up.

You said that building control will have more say under the new legislation. A benefit of that is the co-operation between building control and planning. I know of some instances, such as those that Lord Morrow talked about, where building control has inspected the foundations and that type of thing before planning permission was given for the housing. It seems to be a roundabout sort of way of doing things. In the future, with local government, will you see a better tie-in between building control and planning in that situation?

Mr Kerr: Absolutely. As I said earlier, that is one of the great benefits of transferring planning to local government. That is the way in which it operates in the other jurisdictions. It is more difficult for us, as a Department, to be co-ordinated with councils, whereas, if a particular local council is responsible for planning and building control, it stands to reason that even that very structural change will lead to a better joined-up approach between the two.

Mr Molloy: The five-year renewal was very useful. Lord Rooker wiped that out. He introduced some bad legislation, so maybe it is time to be reminded of some of the bits that are left over. The idea of being able to renew it alleviates the problem that we have at the present time of a lot of foundations having been dug out, sub-floors in places and eyesores all over the place, whereas a developer, whether it be for one house or more, can renew that and have a five-year thing. There may have to be some timescale on it of two or more renewals. It needs some sort of legislation to make sure that it is right.

The Chairperson: The Department carried out a really extensive consultation for the 2011 Act. Now you are putting in two new bits. The promotion of economic development and good design are new for the Bill. You said in your explanatory notes that it will be subject to consultation and scrutiny during the Assembly process. What consultation are you doing? Are you doing any public consultation? You do not have time.

Mr Kerr: No. We do not have time. Changes to do with economic considerations emerged through the Executive process of the Bill going through the Assembly. We see the scrutiny process by the Assembly and the consultation that you will be doing as an opportunity for public consultation and scrutiny, particularly of those aspects of the Bill.

The Chairperson: So, you expect the Committee to call for evidence as a sort of consultation?

Mr Kerr: We assume that the Committee will call for evidence. We welcome that as some consultation that can take place, particularly on the newer issues that have come through.

Lord Morrow: This sounds like a trivial point, but the Bill states that it will come into operation on a day or days that the Department may, by order, appoint. Could we wait for six to 12 months after the Bill goes through the Assembly before the Department makes its decision, or is there a time by which it must move on it?

Ms I Kennedy: That is quite a standard clause in most Bills, because there may be other pieces of work that we need to line up in terms of, say, subordinate legislation to make the policy work. You commence the provision when you have the subordinate legislation or, perhaps, guidance ready, but it is very much that the Department needs to set out a programme of when it is going to commence the various elements.

Lord Morrow: Yes, so it could be a long time. Well, maybe not, but it could be an indefinite period after that before the Department makes the order.

Ms I Kennedy: It could be, but we are keen to get these reforms in place so that they do make a difference and are available before the transfer. Some sections listed in clause 27 will come in when the Bill receives Royal Assent.

Lord Morrow: I think that we had this with the parts on ground rent when, in fact, the Bill was some time passed before it was ordered by the Department to commence. We just hope that there would not be a long, long delay after the Assembly does its bit, but thank you for your reply.

Mr Boylan: Surely we have an idea of what subordinate legislation we need to bring forward. We need to learn from some of the past Bills, when it took a serious period of time, so that we have an indication of what is coming. I would like to see it move forward fairly quickly.

Mr Kerr: So would we. We would need to move it forward quickly in order to achieve what we want to achieve from the Bill.

Mr Molloy: Under clause 22 in relation to grants, the Department has the power to grant aid to non-profit-making organisations. I assume that is like support organisations for planning for third parties. Surely there has to be some means of verifying whether there are valid objections or just objectors. Objectors can object continuously, and if you have the Department funding a non-profit organisation to carry on those objectors, the objectors can keep going, whereas the developer, individual or economic development project has not got the money to continue. Is there some means of vetting that to make sure that those objectors have a valid objection in the first place, before funding is given to them?

Mr Kerr: In a sense, there is already the facility for us to grant aid and the organisation that we do that with, and have done for many years, is Community Places, which used to be Community Technical Aid. The idea is that it assists local communities and local people who would not have the expertise to participate properly in the planning system to be able to do that. If, as a result of that or as a result of funding some other body to do that sort of work, there were objections coming forward that were vexatious or irrelevant and so forth, that would have to be dealt with through the course of that application and those objections would not be given weight if they were of that nature. However, it would be very unlikely for that situation to arise. Certainly, that has not been our experience of operating with organisations such as Community Places.

The Chairperson: Community Places would be objecting on behalf of a group of residents rather than an individual. It would never side with an individual.

Mr Molloy: Chair, I would have to cite one particular case where one family with support in the community was supported by a body and the planners over-ruled and even cautioned the people that the objections were not only not valid but treacherous. Yet the Department continued to fund the support organisation for that. There is a danger that objectors can be serial objectors and be continually funded. That is at no cost to them, so it is very easy to continue to object in that situation. As with legal aid, we need some sort of a qualification in the new legislation.

Mr Weir: It is right that there can be that level of support for people at times. However, care needs to be taken to differentiate between genuine community concerns over things and where it is the serial objector. We have all seen such situations. In north Down, our controversies, more often than not, are where there are a large number of objections. However, sometimes what appears on paper does not necessarily match reality. You sometimes see or hear of a number of objections, but when you boil it down, you find that it may well represent four times the number of households that are actually objecting. On some occasions, every member of the household writes in, and sometimes you find that someone has written in half a dozen times and it counts as an individual objection each time. I have also seen situations where there should be something reasonably valid. One person in the street gets a real bee in their bonnet and, because of the way they present the thing, effectively co-opt, for want of a better word, a lot of people who live locally to sign petitions or whatever. Those people may not necessarily be given the full facts. There will be that side to it. That is just a comment.

On Lord Morrow's point about the commencement side of it and to reinforce as regards the timescale, people may be concerned at times and there may be very valid reasons for needing particular bits of subordinate legislation and regulation. From the point of view of handling that when putting it through and also from the PR point of view, at times, people have an expectation. When they see something passing through the Assembly, they expect it to become law immediately. For instance, one of the things that a number of us got — understandably, given its nature, there had to be subordinate legislation — was when the Department produced the high-hedges legislation. You had, effectively, the guts of a year before that came into effect. A number of people who saw it pass through the Assembly asked why that was and why they could not make a complaint under the new law immediately. There were good reasons why that was the case.

Let me just clarify a point about the commencement provisions of this. Obviously, there are clauses that will come into effect on Royal Assent. For the remainder, is it the intention for commencement orders to be staggered? Of the remaining 20 or so clauses, do you intend for them all to come into

effect at one particular point in the future, or is it a question of having, say, four or five of them coming into effect with one set of regulations and others later? What do you see as the way forward for those regulations?

Ms I Kennedy: I think that some of them will naturally group together, and we would try to do those at the same time. Ultimately, the overall aim is to get these in place as soon as we can, so that we can make a difference before 2015.

Mr Weir: I understand. What you are saying is that commencement is likely to be staggered in two or three or in three or four chunks, rather than being a single thing. Thank you.

Ms I Kennedy: Yes.

The Chairperson: OK. There are no more questions. Thank you very much for coming and thank you for your presentation. I am sure that we will see you regularly about the Bill.