



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Planning Bill: Initial Clause-by-clause
Consideration

25 April 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
Mr Tom Elliott
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Ms Michelle Bamford	Department of the Environment
Mr Brian Gorman	Department of the Environment
Ms Irene Kennedy	Department of the Environment
Mr Angus Kerr	Department of the Environment
Mr Simon Kirk	Department of the Environment
Mr Tom Mathews	Department of the Environment
Mr Kevin McKeever	Department of the Environment

The Chairperson: I will remind members briefly what clause 1 is about. Most respondents to the Committee's call for evidence supported the concept of a statement of community involvement but felt that further guidance was needed and that there needed to be a definition of community involvement.

I welcome Angus Kerr, Irene Kennedy, Tom Mathews and Simon Kirk. I understand that you will bring in other staff as and when needed. Thank you very much for coming. We went through the business very quickly this morning to allow more time for this. We have to look at the entire report, but we will have time next week as well. We will spend more time on the clauses that received most responses and go through the other clauses more quickly.

I invite Angus to start with clause 1. I do not think that there is anything particularly controversial in it.

Mr Angus Kerr (Department of the Environment): Do you want me to talk about the overarching purpose of the Bill again to refresh people's memory?

The Chairperson: Yes.

Mr Kerr: As you are aware, the purpose of the Bill is fundamentally to accelerate the reforms that were in the Planning Act (Northern Ireland) 2011 ahead of the transfer of planning powers to councils.

Broadly, the focus of the Act and the Bill is to modernise and strengthen the system to provide faster processing of planning applications; to have a fairer and faster appeal; to enhance community engagement and involvement in the system; to have simpler and tougher enforcement powers; and to enhance some environmental aspects. The reason that we are moving ahead at this time is to provide an opportunity to test the reforms to get a better and fuller understanding of how they work in practice and to allow us to transfer to a reform system that councils, planners, developers and, of course, the public will be familiar with. As the Committee is aware, the quicker we get it in, the more time there will be to test those things in preparation for the transfer of functions. All the changes and provisions in the Bill were in the 2011 Act. Everyone will be familiar with the two exceptions, which are the clauses on the consideration of economic development — clauses 2 and 6 — and the provision for the Department to formulate policy with regard to the desirability of good design. Those are the only things not in the original Act. I will pass over to Irene, who, if you are content, will remind everybody what clause 1 does and deal with some of the issues that came up.

Ms Irene Kennedy (Department of the Environment): Thank you, Angus. Clause 1 carries forward a similar provision from section 2 of the 2011 Act and introduces a requirement for the Department to produce a statement of community involvement, which is its policy for involving the community in its development plan and planning control functions. It is to be produced within one year of the clause coming into operation. Chair, as you mentioned, there was quite a bit of support for that provision. The Department intends to produce guidance for councillors on how statements of community involvement should be produced, and those statements will set out how the Department and councils will engage with communities in preparing development plans and in delivering the development control functions. It is the how, when and where.

The Chairperson: The Northern Ireland Local Government Association seemed concerned about the timing and the requirement for it to be done within one year. Will it be one statement for everybody or will every council produce its own?

Ms I Kennedy: The one-year requirement in clause 1 relates to the Department; it does not apply to councils' statements of community involvement, which will be prepared when powers transfer to councils in 2015. I expect that councils will want to produce their own individual statements on how they will involve the community in their area. That is the requirement in the 2011 Act, and it is an opportunity to set out, in conjunction with other initiatives that may involve the community, how the community will be involved in planning. It can be tailored to their individual areas and requirements.

The Chairperson: Will there not be a time limit for councils to produce it within a year of their formation?

Ms I Kennedy: No; there will be a link to the production of the local development plan. Before they consult on the planned strategies and their local development plan, they will need to have the statement of community involvement in place. However, it is not a requirement that councils do so within one year.

Mr Elliott: Thank you very much for that. Did you say that it is already in legislation that councils have to have their own community statement?

Ms I Kennedy: Yes.

Mr Elliott: OK. Is there any potential conflict between the councils' community statement and the Department's?

Ms I Kennedy: No, because the Department's statement of community involvement will cover the Department's functions post-2015, while the councils' statement of community involvement will cover most of the planning functions that councils will look after.

Mr Elliott: I am trying to get this right. The Department's statement may not have any planning issues in it?

Ms I Kennedy: Post-2015, the Department will be responsible for processing regionally significant development applications. Those major applications are similar to the article 31 applications that we process currently, so we need to set out how we will involve the community in the processing of those applications.

Mr Elliott: Therefore, the Department's statement will deal mainly with the bigger issues.

Ms I Kennedy: Yes.

Mr Kerr: It will also deal with policy. At that time, the Department will be responsible for the regional policy for planning. We will consult the public on policy.

Mr Elliott: The councils' community statement will basically be about local planning issues.

Mr Kerr: Yes.

The Chairperson: In a way, they are not likely to replicate exactly the Department's statement.

Ms I Kennedy: There will be some similarities.

Mr Kerr: Councils may look at what the Department has done, particularly what it does under the Bill as soon as it comes into effect. In Northern Ireland, the Department will produce the first statement of community involvement, which I suspect will be referred to by councils. I expect councils to look at some of the statements of community involvement that have been prepared by planning authorities in other jurisdictions, of which there is a wide variety and range that deal with all sorts of different approaches to community engagement, participation, social media, and new ways of consulting the public and involving them in planning preparation, and so on. It is important that councils have the flexibility to look at such things. Some councils may be proactive and modern in their approach; others may wish to be a bit more traditional. That will be an interesting dynamic as you move into the new powers of councils.

The Chairperson: The Bill does not say that all councils have to produce their own statement; only the Department is being asked to produce a statement.

Mr Kerr: Yes, because the Bill applies only to the Department. The Act that will come into effect when councils get planning functions will state that they have to prepare statements of community involvement.

Mr Boylan: You are welcome. I see that you brought the whole team today; perhaps you are expecting plenty of questions. I have a simple question. The statement of community involvement sets a guideline or criterion of where you want to go. Are we saying that it is up to the local authority to choose who it wants to be involved? I say that because, in an area plan or anything else in the future rolling on from this, the likes of the community and voluntary sector will be involved. Where does the training come from? Where is the professional expertise and resources that you need to develop that? Where are we going with that? Who pays for it? Is it up to councils to train the community and voluntary sector?

Mr Kerr: We are engaged in a programme to get ready for the transfer of powers to councils. As part of that, there is a capacity-building programme that will cover a wide range of issues across the whole local government reform and reorganisation front. There is particular work on our side on the planning bit of that. One of the aspects that we will look at is the broader issue of community involvement and engagement. That work is in progress, so we do not have the details of whether there will be sessions on statements of community involvement, pre-application community consultation and so on, but it is likely that there will be. Those will be some of the key areas in which we want to build capacity not just among councils but our staff because this is all new. The planning staff who move across will be new to it as well. That is a part of planning that is developing.

Mr Boylan: I agree. I bring it up because it is grand us sitting here and putting something on paper. However, it is about how it rolls out on the ground. When we talk to councillors, that is the question that is being asked. It came up earlier in the Committee about the reorganisation Bill and who will participate and what level of participation that will be. Ultimately, that is our endgame and goal. We want to try to tease that out now so that we can get that message down. There are people who need to be involved in the process, especially in the development of plans. We have many complaints about area plans at the minute. It is about community and the departmental operation of community development plans. We are trying to tease all that out.

The Chairperson: That will be part and parcel of community capacity building. That would be community planning, the community development plan, and so on. Have you appointed anyone to do capacity building in the community?

Mr Kerr: We are at the scoping stage. We had an announcement recently from the Executive about the funding for capacity building. At the moment, we are scoping out the needs; we are looking at the users and stakeholders in the system. There are different needs for professional planners, councillors, council officials, and so on. That is all being put together. It will be completed before the summer and will be rolled out through the summer and beyond. The general approach will probably be one of raising awareness; then, the closer we get to the re-organisation and transfer of functions, the more tuned the training and capacity building will become, as we get to know who the councillors are, for example, as we get closer to handover.

Mr Hamilton: I was going to make a point similar to that made by Tom about the overlap.

The Chairperson: But it has been answered? OK.

There are no other questions. Are members content with the Department's explanation? Do you need more information or would you like the clause to be amended to address any of those issues?

Members indicated assent.

The Chairperson: We move to clause 2.

Let me go quickly through some stakeholders' comments. Most respondents felt that the objective of promoting economic development is already material to the decision-making process, and that, therefore, it does not need to be written into legislation. Some stakeholders were concerned that including a specific reference to promoting economic development would give this consideration greater weight than the other considerations relevant to sustainable development.

Concern was also expressed about the level of economic data that would be required and the fact that there would be no legal mechanism to ensure that the claimed economic benefits of an application actually occurred. The argument was also put forward that including an objective to promote economic development would add significant costs to the planning approval process through the employment of economic experts, training existing staff, the preparation of detailed economic assessments by developers and additional court costs due to increased challenges. There were, of course, other stakeholders who supported the clause.

Do you want to respond?

Mr Kerr: The question is whether there is a need for it, and the argument is that, perhaps, there is not. Our view is that there is a need to clarify and confirm that that is a consideration to be borne in mind when we are preparing policy and plans. The clause applies to policy and plans —

The Chairperson: Can you speak up a little?

Mr Kerr: The clause applies to policy and plans but, as you know, the Department will not be bringing forward any plans before the transfer of functions, so it applies just to the policy that we will be bringing forward. It clarifies that, along with well-being and sustainable development, economic development and the desire to promote it must be included in the preparation of policies. The argument is that there is a need to put it there, and the clause clarifies and confirms that.

I turn to the point about cost, adding a further burden to the system, delay and detailed tools. The intention is that a proportionate approach should be taken to economic considerations. This is straying slightly into clause 6, which sets out that economic considerations are a material consideration in the determination of planning applications. In guidance and in the single planning policy statement that will be introduced, we will want to clarify what is required. The intention will not be to have a detailed economic assessment of every planning application, because that would be very costly and slow down the planning system. That will all have to be dealt with, and there is a recognition in the Department that we need to clarify that.

The Chairperson: It is right to clarify things. There seems to be a great deal of confusion about what sustainable development is, and, apparently, there is no one term or definition. Others argue that sustainable development will mean balancing economic and environmental considerations. There are also suggestions from stakeholders that if we were to put in a clear definition of improving or sustainable development, which would include health and well-being and economic and environmental considerations, that would cover it all, rather than having three other objectives. Can we not do that to say that promoting sustainable development is a, b and c?

Mr Kerr: Ordinarily, you do not use primary legislation to define concepts such as sustainable development, well-being and economic development; those are normally defined and explained in further guidance and policy underneath the legislation.

The Chairperson: Angus, you have to speak up a bit.

Mr Kerr: Sorry. Normally, you do not use primary legislation to explain or define how a concept will work in planning, because it is such a complex and detailed area and will apply differently in different situations to different types of planning work, including determining planning applications and developing forward plans. It has always been the Department's intention to explain and clarify what those key concepts mean through the single planning policy statement and the guidance that will probably sit underneath that, which will come up for consultation towards the end of this year. It will come to the Committee for consultation as well. That is where we will want to explain all that and ensure that there is clarity on those issues, particularly on economic development, sustainable development, well-being and, indeed, the good design provision, which is in there now as well.

The Chairperson: What do we mean by "well-being"?

Mr Kerr: That is a good question. The concept came in when the Act was scrutinised by the Committee previously.

Ms I Kennedy: It was an amendment that was introduced by the previous Committee. We will have to elaborate in forthcoming guidance and policy about what we understand it to mean. We are all aware that people's environment has a very important impact on how they live and how they perceive their surroundings. Healthy spaces, safe spaces, access to employment and access to facilities all affect how people feel and their health and well-being.

Mr Kerr: The key aspect is on the role that planning can play. A concept such as well-being brings in many different Departments and different issues that are beyond government, and it is about trying to articulate what planning can do to assist in those issues. In our work on a single planning policy statement, we will engage with Queen's University, with organisations such as Healthy Cities and with other Departments that may have a greater role in concepts such as well-being to try to bottom out, through that engagement, what we feel is reasonable for planning to do to contribute to that. My concern is always that sometimes there can be raised expectations about what planning can achieve in some of these matters, so there is probably a debate to be had about that. It is a broad concept and a laudable aim, but it will be delivered by a number of activities and agendas across government and, indeed, beyond government.

The Chairperson: Will it be a legal minefield?

Mr Kerr: I hope not. You can never be sure, or guarantee, that there will not be judicial challenges.

The Chairperson: This is so vague. It is open to interpretation by different people and Departments.

Mr Kerr: That is why we need to take the vagueness out of it through what we bring forward in policy and guidance.

The Chairperson: How do you respond to stakeholders who object to it so vehemently? How do we respond to them and reassure them that economic development will not trump all other considerations? They are all serious stakeholders. Queen's University, Belfast Healthy Cities and the Council for Nature Conservation and the Countryside say that the single planning policy statement gives too much weight to economic development. Nobody in this room would argue that we do not need economic development. They all say that they support economic development. We need it, but

it is a case of striking a balance and not giving economic development the overall weight so that all the other considerations could be ignored. People are really concerned about that.

Mr Kerr: We recognise that. As a Department, we are concerned to make sure that the fears expressed by some stakeholders and NGOs do not become a reality. In general, no matter what we put into legislation, the proof of the pudding is in the eating. It is often about how legislation is implemented, brought forward and operated.

I think that some comments from NGOs at the stakeholder event last week pointed in the right direction, whereby it is too simplistic to look at the economy and the environment as being in opposition. If we really want to go forward seriously as a society and with a planning system that is effective for a modern society, we need to see how the two areas can be aligned in the way that they operate.

There is no intention, in the way that the legislation is written, to have one consideration above the other. It is very much our intention that they go forward together, in the way that the legislation is operated, to produce a system that values the environment and the economy, and recognises the value of the environment to the economy and vice versa.

It is difficult to give the absolute and ultimate assurances that some people are looking for because sometimes these things become clear as the system is implemented and rolled out. However, the intention is certainly there to do it in the way that I expressed.

The Chairperson: People are concerned that the legislation will give developers so much power. It is not just the big developers who will bring economic development, it will be all and sundry — all developers — and they will have the weapon to go to planners and say: "this is in your law and we want it."

Community Places and a few other stakeholders suggested amendments to make the wording clearer and to provide definitions. Will you look at those? For example, you could spell out what "well-being" and "social cohesion" mean. Community Places put forward a suggestion for an amendment to avoid confusion. Will you look at that?

Mr Kerr: Yes, certainly. We would be glad to look at that if the Committee would like us to do so, and we could then come back.

The Chairperson: Do any members want to come in?

Mr Boylan: Chair, I am trying to find out exactly where we are going and whether there are examples of economic weight or economic consideration overtaking anything else in planning applications. I have asked for examples of how this would happen. We are saying that economic considerations will be the determining weight on every single application. That is the perception that some people are trying to portray.

I want to try to split this up between urban and rural, and central and local: if we are saying that the article 31s will remain central, the local areas will develop their plans with their communities being involved and having their say on what they want for their local areas. Is that right? That is the way we are going forward. If local authorities, along with local communities, are developing areas plans, or a contribution to an area plan, to develop their areas, and they can have a say in the economic weight or considerations, that is one element of it.

The other issue is that people are concerned about single applications in rural areas. I know that economics is involved in every application no matter whether it is a single house in the countryside or a building, and I am just trying to tease out exactly where the main economic determining factor would come in.

You are right, Angus, we have to take the vagueness out of this for sure. I would like to look at the application process because I think there is an opportunity there. I know people have made this argument to me, and it will be debated again before we make any final decisions on the issue of advantages and disadvantages.

The Chair opened by mentioning the extra cost to developers and significant costs, but if you bring forward a business plan and a business development, that is up to you. We do not want to burden

people at all; we want to encourage growth and development and we want to encourage people in. I am concerned about how we get round that element of the economic arguments — the advantages and disadvantages — because some people could play it one way or another.

The Chairperson: Will we leave that until later?

Mr Boylan: No, I will just throw it in now because it is the same thing in clauses 2 and 6. It equates to the same thing, and the reason I say that, Chair, is because we need answers as to how we actually deal with it. I think it should be through an application process because I do not want to hand this to a local authority only for it to have the same problem. I am concerned about judicial reviews, I am concerned that local councils would not have the resources and expertise to challenge the whole process, but, on the other hand, it is up to them to come forward with their development plan and community plan. So, that is the argument for where we are with all of this. That is my comment on it, Chair.

The Chairperson: What we are worried about is that it may become counterproductive to try to speed things up and be helpful to businesses but instead add to their burden in that they must provide the economic benefit or economic advantages, and the planners would then have to spend more time training or whatever to try to assess those.

Mr Boylan: What do you mean by "burden", Chair? If somebody brings forward a development proposal, it is not about burdens. The burden has been the policy up to now, and that is what we are trying to identify and straighten out. That is what I want to do. Nobody has brought an argument forward yet, other than the point that economic consideration will be the deciding factor in anything. I have not seen examples, and nobody has given me examples, of where that has happened in the past. You might be able to pick out one or two major article 31 applications, but I am thinking about how it will happen at local level and with local communities making decisions. I cannot see it happening.

The Chairperson: People are worried. This legislation will be for the next umpteen years. It is going to give the added weight that we have not seen so far. You will recall that 76% of respondents objected to draft planning policy statement 24, and the Minister then withdrew it. That was on economic development. It was not exactly the same thing, but it also gave extra weight in planning decisions, and we have to take that into account.

Mr Boylan: If we are concerned that that will be the case, can we look at having a review process, or set it in guidelines or legislation, that if the economic considerations go through, we will look at it, or give powers to councils to look at it, if people believe that too many decisions are being made on that basis? The Minister is doing that under planning policy statement 21 at the minute. I am only throwing that open for discussion.

The Chairperson: There are a few suggestions. On pages 35 to 39 in the summary of responses in your packs, people have suggested amending the wording to round it up better. On page 35, it states:

"furthering sustainable development which secures: protection and enhancement of the environment; promotion of economic development; promotion of social development; and promotion or improving well-being; and which balances current needs with those that may arise in the future."

That is from Community Places.

The Northern Ireland Biodiversity Strategy has put another very good comprehensive definition of it, if you want to have a look at that, members.

I want to be fair to our stakeholders. We asked them, and the majority said that this was not good. I think that we need to listen to them and try our best to see how we can amend this or make it clearer, in order to have that two-way process with others. If not, there is no point in asking people to come in and make submissions. They all turned up on time. If we were to go away and say "forget about it, that is what it is", I would feel bad about it.

Mr Boylan: Thanks for letting me in again. We held the stakeholder event only last Thursday. There are issues that we need to read through, but, from our party's point of view, there is still an opportunity

to bring something forward. At the stakeholder meeting last week, I asked for examples, and I asked the Department to give us examples of where this could go wrong, in order to allay some fears. We are taking the stakeholders' points of view on board, but that argument is still not coming up. It is still open. We still have another three or four weeks to go.

The Chairperson: As far as giving economic concerns extra weight, you can look at Runkerry.

Mr Boylan: It is a "consideration", Chair. It says "economic considerations" criteria as part of an assessment of an application.

The Chairperson: People were worried about fracking. This would give strong economic emphasis, and people on the ground are worried about that. As I said, it is not the big developments, which we all want and that would bring 500 jobs. We are also talking about small developments in every one of our constituencies.

Mr Boylan: Yes, Chair. There is no point in me and you getting into a ding-dong over this, but, going back to the original point, the local authorities will be developing plans for their own areas and will have the say on them. Maybe I am wrong about this, but that is my view on it.

Mr Kerr: It is correct that, as the plans move forward and as this is implemented post-2015, the councils will take economic development into account, because they are required to do so if the provision stays the way it is in the legislation. That will be factored into the zonings, policies and proposals that will be in the plan, in the appropriate way that the council, and the community that the council is consulting with, feel it should be. So, that is absolutely right, and that is where it comes forward when it comes to the plan.

However, when you move into the clause 6 aspect, which is really talking about material considerations and planning applications, there are a number of points. One is that we need to clarify and explain much more clearly how it will work in policy and guidance. We can say some things. For example, it will be proportionate. It is not the intention that this will be something that applies to every single house in the countryside or to small extensions. If you build an extension to your house, you are clearly contributing to the economy in some senses.

The Chairperson: Yes, everyone would say that you may increase the price of your house but you block the light of your next-door neighbour.

Mr Kerr: And you provide work for the contractor who builds it.

Lord Morrow: You decrease the price of your neighbour's house, and we end up where we started.

The Chairperson: Yes, that is a disadvantage to him. So, you can argue either way.

Mr Kerr: The key thing to remember is that the planning system does not exist for private interest. It is fundamentally about public interest. So, economic considerations will take place within that context. Sometimes, public interest can align with private interest. For example, where a developer gets planning permission to do something, it can be very good for him and also good for the wider economy and the public interest aspect of the economy. That is where the focus will be. It will not be on whether there is economic advantage to an individual or a particular company: it will be about the wider community aspects of economic regeneration.

As you said, the Runkerry development is a reasonably good example of that. Agree with it or not, that was how the economic considerations were dealt with and pitched at that wider strategic level. It was not about the developer making a lot of money out of it or getting economic advantage. That is not how economic considerations were weighed into that proposal. They were weighed in on the basis of there being economic advantages from the proposal for the wider community of the area and for Northern Ireland as a whole through areas such as tourism and the multiplier effects from that.

So, on the one hand, there is work to be done in clarifying and explaining all of that in a lot more detail. However, there are some things that we can say and there is some clarification that we can give on the focus of this, the proportionate approach and the fact that it is focused on public rather than private interest.

The Chairperson: In the Northern Ireland sustainable development strategy, we mention economic, social and environmental issues. Can we not use our own definition in this, which includes all three, rather than adding something new about well-being and economic development? We have defined the three strands in our sustainable development strategy.

Mr Kerr: I am thinking back to the last time we discussed this issue. Irene can keep me right, but, if I remember correctly, there was a discussion about whether, given that there was an existing requirement on Departments to take into account or give regard to sustainable development through that strategy, and so on, we needed to include that in the Act. We did in the end, as you know. We can have that discussion now as well.

The Chairperson: We had that for the Marine Bill.

Mr Kerr: You had, yes. We have always had it. It came through as a result of the amendments in 2006 to the existing planning order. Throughout that time, and through discussions on the 2011 Act, it was felt important to clarify for the planning system that sustainable development is particularly important for planning. Therefore, it was considered right and proper, at that time, that we should identify that and say that in the legislation. I think that there was some debate about whether we really needed to. In the end, it was considered important that we do, really because of the planning system's fundamental importance as a vehicle to implement sustainable development.

The Chairperson: If our strategy states that sustainable development means those three things, do we need to repeat it when referring to economic development in this Bill? By repeating it, you imply that it carries one more bit of weight in defining sustainable development. That is what people are arguing about.

Mr Hamilton: I have a simple question. I listened last week to all the comments made and I have read many of those that came in, so I appreciate that there are concerns about these two clauses. I also heard some fairly ridiculous things said last week, as people with a vested interest presented their views on how this would work out and be manifested. They did so in a way to actually scare people. One of the phrases used, when we talked about weight, was that this would give "supreme weight" to economic considerations. I want to clarify and have it put on the record: is the Department of the view that the clause does or does not give economic considerations additional, extreme, supreme, determinative, or whatever, weight?

Mr Kerr: It is the view of the Department that it does not do that.

Mr Hamilton: In essence, that would be my view as well. Therefore, this is merely a highlighting, an underscoring, or an accentuation, of an element that is already considered and, some of us would argue, forgotten about sometimes and not seen as being an equal consideration. Rather than bringing one element above another, it is about having a level playing field. Some argue that, at the minute, it sometimes appears that economic considerations are afforded less weight than others. It is not about making the issue higher; it is about affording it the same level by highlighting it.

Mr Kerr: Yes, I think that that is the rationale behind it.

Mr Hamilton: If the argument is being made that if planners are now going to have to take economic considerations into account, they will have to have training, I think that that will be a good thing. It worries me that it may not have been the case. I think that the provision will allow planners to have a better opportunity to consider these factors, and affording that to them, by whatever means, is positive. I just wanted to check that point.

The Chairperson: How do you respond to the comment that planners are not economists, so it is not their role to promote economic development?

Mr Hamilton: Are they environmentalists?

The Chairperson: Their role is to plan for land use and development. It is not what I say; it is a point that is repeated in the submissions. How do you respond to that?

Mr Hamilton: What are you using your land for, though?

Mr Kerr: It is often said that planners are jacks of all trades and masters of none, in a sense. That is because the type of work that we do, in forward planning and in the determination of planning applications requires a level of knowledge across a range of different and complex issues, whether those be the economy, detailed environmental issues or the whole community engagement skills that are required, and that is not to mention having the political nous required to run an effective planning system. It is an area that we have been doing a lot of work on any way, over the past number of years, training planners to take into account and understand the economic impact of decisions and policies, and how they are moving forward. It is an area that has been recognised as a development need, if you like, for planners. That is something that has been concentrated on more recently.

Into the future, that is going to remain the case. The facility is always there in the planning system to use experts on any issue. You are all familiar with the approach of consultations with planning applications. The same process goes on for developing policy and plans. A lot of our work is about engaging with the experts and the professionals on particular issues, and then taking that, balancing it all up, taking it into account, considering it and coming forward with an agreed way forward that takes into account, in an appropriate way, all the various issues. I see that as a role of planning, and one that will continue.

The Chairperson: OK. No other questions? Tom, do you want to speak?

Mr Elliott: Not really, Chair. It is coming down to a decision, at some stage — I am not saying that it should be made today — on whether you think it gives extra weight to economic development. To some degree, I agree with Simon that, at times, economic weight has not been given enough priority in the planning sector, and sometimes it is maybe given too much in the bigger economic projects. It is my belief that, quite often, there has been almost a weight against some of the small and medium-sized businesses in the planning system, and they feel that a deep unfairness. I suppose it is that balance. It is not really a question, but I am trying to get to that stage.

The Chairperson: Would members be content if we asked the Department to go and look specifically at some of the suggestions about making it clearer from stakeholders' submissions and to come back with suggestions?

Mr Hamilton: Surely the Department does that anyway. That is what this process is about. We share the stuff that we get with them; they give their feedback to us. That is why we ask questions. I presume that is what happened. I would be cautious about raising false hope that we are working on an amendment. The Committee has yet to take a position on whether it believes it or not. Asking the Department to go away and work on it, which is what you just said, and to work on an amendment, suggests that we will be supporting an amendment, which is not the expressed position of the Committee at this stage.

Mr Elliott: Let me ask the reason why the Department felt it necessary to put economic development in there as one of the points on the face of the Bill. It might be interesting. I know the explanation is that economic development gets weight anyway, through the sustainable development aspect, but clearly there had to be a rationale for putting it in there specifically. Maybe if there was an explanation around that, today or in writing. I know the Minister referred to it when the Bill was going through its previous stage in the House. It might be better if we got a clear, definitive view from the Department on why that was specifically put in like that.

The Chairperson: I support that.

Mr Elliott: I think it would help us, actually, as well.

The Chairperson: If there is a problem or issue, putting this in would try to address that problem or issue.

Mr Kerr: Yes. As I have said already, it was an approach to confirm and clarify something in legislation, which is a practice that goes on in any case. That was a key aim. The other issue that was in there was the point that there are already quite a lot of environmental issues flagged up in legislation. There are habitats directives, environmental impact assessment directives, strategic environmental assessment, and that sort of thing. I think there was a desire to, if you like, balance

that up by clarifying in legislation that there also need to be economic aspects to any of these decisions. That was really what was behind this approach.

Mr Elliott: OK. Maybe there is a feeling from the Department that some economic development proposals did not get enough weight in the past. I will not ask them to comment on that.

Mr Boylan: We need to be very careful because we may bring forward something here that is to do nothing. I have sat in many a planning clinic on a Wednesday or Friday afternoon with applicants from my area who turn round, and the economic considerations did not add anything. There were people with some good ideas who wanted to develop and create jobs and everything else. I have seen that element of it, and we need to look at it seriously.

We had a debate in the Chamber the other day, and we talked about growth and jobs and people leaving the country. We cannot say that we are trying to keep our young people here, and our construction industry, and trying to develop things, but then create a policy that does not allow for that, or give some consideration to it. That is the word; there is an open-ended interpretation. It is not determinative weight; it is consideration. That is what I would like to see being developed, to be honest. We are still in Committee Stage, and if anyone has any other viable or proper rationale or has serious concerns or examples, I am willing to listen to them, but those have not come forward yet.

The Chairperson: Runkerry is a good example. People also said it about —

Mr Boylan: In the grand scale of things, I did refer to article 31s, and we need to look at that. If that is an example, let us tease it out, but I am saying that the majority of businesses in the North of the island are small to medium-sized enterprises, and if they want to grow or develop, or if communities want to develop a plan, economic considerations will be part of that plan. That is the debate that is on the table, and we need to look at it seriously. I think we give serious and good enough scrutiny to all these debates, but no proper examples have come forward.

The Chairperson: Cathal, local people in many areas in South Belfast, my constituency, would say that those areas have been blighted by over-development.

Mr Boylan: There are six counties; there are other parts of the country that we need to look at.

The Chairperson: In one small area, it used to be all detached bungalows and detached houses, and now at least one third of the houses there are apartments. That changes the character of the whole area.

Mr Weir: You mentioned apartments, and there is an interesting point to be made about taking into account economic considerations. I remember being involved in lengthy planning appeal cases in my constituency relating to apartments. One of the arguments that I and others used, or at least tried to raise, was that there was no economic climate for building apartments and sustaining them. The counter-argument was that that was not relevant because we could not take economic considerations into account and, therefore, the apartments were approved.

So, let us remember that this sort of thing can cut both ways. The same applies to clause 6, leaving aside urban settings, which you and I would be more involved with and which are not the same as elsewhere.

Mr Boylan: That is fair enough, but let us move the policy outside of Belfast.

The Chairperson: There are plenty of garden-grabbing examples in South Belfast as well, trying to squeeze a house into the back of someone's garden.

Members, how do we go forward from here?

Mr Boylan: I have heard the explanation from the Department.

The Chairperson: Are you content?

Mr Boylan: Well, we are just taking evidence.

Mr Hamilton: We are still doing that.

Mr Boylan: That is why I asked the question at the start of the meeting.

Mr Hamilton: There are no decisions.

The Chairperson: No, but do you want any more research or information?

Mr Hamilton: No, not from the Department.

The Chairperson: I am not asking you to approve anything today. We still have the formal stage to go through. Is there any follow-up work that you want to look at?

Mr Hamilton: Not on the basis of anything that we have had so far. We have more evidence sessions to take.

Mr Boylan: The one thing about it, Chair, is that obviously people listening to this today may have counterarguments to some of the points made, and, if they do, they should feel free to write in.

The Chairperson: To write —

Mr Boylan: It is up to them. They have put in most of their arguments anyway. I am only saying. I am happy enough with the explanation given.

The Chairperson: I would quite like to see more done to address the stakeholders' comments. I do not want to raise expectations, as Simon said, but is there any way that we could have economic development in it while assuring people that economic development is not going to add extra weight? I think that that is the overriding concern of the stakeholders who wrote to us.

Mr Milne: I would just like to say that I have not read the word "weight" anywhere. It is a consideration. I think that, sometimes, there are exaggerations about the whole process here or the whole thing round this. Is somebody saying that there should not be economic consideration, if you know what I am saying? What is wrong with using the word "consideration"? Does consideration not mean that everything is considered?

The Chairperson: Yes, but what the stakeholders are saying is that sustainable development already includes economic consideration. So, if you add on the promotion of economic development specifically, you add that extra layer. So, people's main concern is that it is just not balanced now.

Mr Weir: Chair, the only thing I would say is that I understand people's concerns. However, some of those concerns have been overplayed. Some have said that this will give it primacy, that it will be an overriding consideration or whatever, but the language that has been used is not in the legislation. So, I think that we have to be careful not to feed people's false fears. It is important that the Department looks at the responses as a whole.

The Chairperson: It is clear that there are a lot of concerns and fears about it. I just want to see how we are going to address that.

Mr Hamilton: There are also — I would not describe them as fears, but there are certainly concerns on the other side of the argument as well. Those concerns may not have been expressed in the same volume as those expressed by others last week, but that does not mean that they are any less important. So, let us not get carried away by thinking that there is only one set of concerns here. The proposed clause is to deal with other people's concerns as well. There are many different stakeholders who have different concerns; it is not just one group.

The Chairperson: The majority of responses were against it.

Mr Hamilton: OK. Let us —

The Chairperson: The likes of the CBI, the construction industry and ASDA wrote in to support it, and quite rightly so. However, it is about striking a balance.

Mr Hamilton: Is that how we do business? On the basis of a majority? As much as we might like that sometimes. I would fancy my chances in a vote now, right enough, on any matter that we want to put before the Committee. It is about what is right for Northern Ireland, the environment and the economy. It is not about what the majority of people who respond want, because they are not necessarily the majority of the people in the country.

Mr Weir: It is my experience from individual planning applications that if we took a decision purely on the basis of what the majority response was — maybe people from rural areas are in a different situation — 90% of the time, when there is any level of anybody writing to the Planning Service on a particular application, it is actually coming from someone who does not want it. So 90% of planning applications would basically be rejected if that was the case. That is not the way it should be. It should be done on the basis of the substance of the submissions rather than —

The Chairperson: Yes, it is absolutely about material considerations. It is not an emotional thing; "I do not like it."

Mr Weir: No, it is not a question of that. The point is that with a lot of planning applications, you find that, to be honest, nobody particularly cares one way or the other, and there will be no response at all. In my experience, you will tend to get a response from the applicant — or somebody connected with the applicant — who writes in to say that it is a great thing, and then you may get five, 10, 20, 30 objections on the other side. On that basis, the majority of people who respond on something are nearly always objecting. I think that it is weighted in the majority objection, but that is probably not the appropriate way to run planning.

The Chairperson: Even a thousand objections, without material aspects to those objections, will not get through — they will not change the mind of planners. However, if you have one person who has serious material aspects that would impact on them, you will look into it. That will sway your decision. It is not the number of people; it is based on the objection.

Mr Hamilton: It is the quality of the objection.

The Chairperson: It is purely on material aspects. I would like to see something. Would members object? Do I need to take a vote? Will members be content?

Mr Weir: There is a better way to deal with this. I would not make it specific. At this stage, where issues are raised, the Department has a duty to respond. If you start boiling it down to a particular issue, you may find that you do not get the response that you want. However, if it is kept on a more general basis, you may find that the Department is producing its thoughts on a range of things without prejudging the Committee's attitude to it.

The Committee Clerk: We have a written response from the Department in respect of all the written submissions that the Committee received, but of course there was a stakeholder event last week, and we are due to get the Hansard report of that today. We will send that to the Department and, where there are any new issues in it, the Department will have to come back in writing. Therefore, those issues will be brought back to the Committee.

Mr Hamilton: That is perfect.

The Chairperson: Would that be fair enough?

Members indicated assent.

Mr Elliott: Chair, can I just add that I know that Angus went some way to explain it. However, it would be helpful to have the Department's view on why it included the economic development aspect as an issue in itself.

The Chairperson: The rationale of it. Yes.

We move on to clause 3, "Meaning of development", which is under the red tab on page 5.

Respondents were split on the clause, with several welcoming it but several objecting as it does not make a distinction between land and building development and economic development. There were also queries as to whether the Department would provide a separate direction exempting demolition in certain areas, and the implications that that would have for the development management process.

Ms I Kennedy: It is important to distinguish what the clause does and to clarify it. It amends article 11 of the Planning (Northern Ireland) Order 1991, so it needs to be read in conjunction with that. It is really a technical amendment that is required to strengthen the Department's existing policy that the demolition of unlisted buildings within areas of townscape or village character require planning permission. It complements the provisions in clause 18 in respect of unlisted buildings in conservation areas. It is really saying that the partial demolition of an unlisted building in an area of townscape or village character will now require planning permission. That follows on from a legal case that debated what demolition was.

The references to economic development and land building development are slightly different, and they refer to the arguments that we have been having on clauses 2 and 6. This is defining development for the purposes of planning and what requires planning permission. That is a bit of the background, and it might set the context a little bit more. It is very much in line with the provision in the 2011 Act. In our response, we clarified the fact that we may be looking at our existing direction — the direction that was issued in September 2012 — to make sure that it also covers partial demolition.

The Chairperson: OK. Any questions?

Mr Elliott: What is the legal case? Was it in regard to a town centre building?

Ms I Kennedy: Yes. It is a case called Shinuzu, and it goes back some years. It related to the demolition of an unlisted building in a conservation area. It had implications for that. It was quite technical. It said that the partial demolition of the building was a structural alteration, and, therefore, required planning permission as opposed to conservation area consent. What we are doing here is clarifying the Department's policy of ensuring that buildings in areas of townscape character or village character cannot be demolished without approval.

Mr Elliott: Is that not the case anyway?

Ms I Kennedy: You need planning permission to demolish a building in an area of townscape character or village character, but there was a debate about whether that would include partial demolition. The amendment will clarify that partial demolition — because that could have an impact on a building or on the character of the area — is also encompassed here and will require planning approval in an area of townscape character.

Mr Elliott: OK. I have to say that, in principle, I do not like some of the issues around townscape and village character areas, because they significantly restrict developments in small towns and villages. I know that significant amounts of finance have been lost, particularly from the likes of the International Fund for Ireland. The finance was to build new premises in townscape or village character areas and it has been refused, simply because you are not allowed to demolish the existing building unless it is structurally unsound. I have mentioned this to you before, Chair. I know of buildings and structures that have been allowed to fall to ruin because it has not been permitted for them to be taken away and something new put in their place, even though there have been proposals to put the front facade exactly as what was coming away. I do not agree with that whole concept whatsoever, so, in other words, I do not agree with this. I think it is restricting development of small villages and towns.

The Chairperson: As I was saying to you, that was permitted in Belfast. On Eglantine Avenue there are lots of houses with just the facades and the backs are totally different. They are brand new, and there are even different floors. You can see through the building from the facade. Is there a different interpretation and no consistency with that?

Mr Kerr: One of the issues we need to think about here, if you like, is that what is in front of us now is really a legislative proposal about whether planning permission is required for partial demolition and so forth. The issues that Mr Elliott is talking about are policy issues, which I sympathise with. That is an important balancing act.

Mr Elliott: I do not want sympathy; I want change.

Mr Kerr: It could be that the policy is the area — when we bring forward the single planning policy statement to the Committee in due course — where we can get into that. We recognise that it is an issue and that sometimes the balance is not right. It is a difficult balance to strike in planning, because you do not want buildings to go to rack and ruin, but, at the same time, you want to retain the proper character of the building, and so on. It is an area that can be difficult, but I am not sure that that necessarily means that this clause is not OK.

The Chairperson: I think the majority of people welcome this. Anybody any questions?

Mr Boylan: I have just one comment. It just goes to show, because sometimes you try to be flexible and work the policies, even with modern design and everything else, and in other ways people are looking to be more specific and restrictive. We will take it clause by clause.

The Chairperson: OK. Clause 4 deals with publicity. Most respondents felt that details of all applications should be widely advertised in the popular press, that it should be mandatory for the Department to notify everyone within the affected area of a proposed development and that site notices should be a requirement. One respondent felt that applicants should be banned from issuing public notices of planning applications during July and December.

Mr Hamilton: During July and December but not August?

The Chairperson: No; December — school holiday time.

Mr Boylan: August is a lovely month of the year.

Ms I Kennedy: It is important to reflect that the clause carries forward provisions in the 2011 Act. It places publicity arrangements for planning applications in subordinate legislation as opposed to primary legislation. The policy behind that is to allow more flexibility in whether we would want to change arrangements to address new forms of media advertising or new ways of publicising an application. Rather than being constrained by what is in primary legislation, putting the arrangements in subordinate legislation allows much more flexibility. There is an acceptance that we need to set out in more detail in the subordinate legislation how that would work.

The Chairperson: It could change with time.

Mr Boylan: For clarification: what about neighbour notification, site notices, and so on? That is a key element that we have debated.

Mr Brian Gorman (Department of the Environment): We will take those proposals on board. We will look at them for subordinate legislation and decide on the detail.

Mr Boylan: That is grand.

The Chairperson: Are members content with the explanation?

Members indicated assent.

The Chairperson: Clause 5 concerns pre-application community consultation. Most respondents welcomed pre-application consultation but felt that it must be carried out in the context of an up-to-date area plan. Some felt that there must be safeguards to ensure that any group representing a community is genuinely representative of that community, with a mechanism whereby interests are declared to avoid single-issue groups dominating discussions and giving false impressions of community feelings. Does the Department want to respond?

Ms I Kennedy: Yes. Again, this carries forward provisions in the 2011 Act. The provision inserts a number of articles that put in place pre-application community consultation. That is part of the Department's reform programme. It is trying to make sure that communities are adequately consulted and involved in applications before they arrive with the Department. It provides an opportunity for

many issues to be looked at and resolved before the application arrives. We have piloted that work in some of the major stadium projects that have recently been approved. It has been successful; a number of concerns have been addressed and allayed before an application comes in, and it has reduced the number of objections that are received. The clause sets out —

The Chairperson: A lot more harmony.

Ms I Kennedy: Yes. It has worked in other jurisdictions. It is part of what we call the front-loading of the system so that there is an opportunity for more engagement and for people to be aware of the application and what it involves, and for concerns to be addressed, often before the application comes in. The clause simply carries forward the changes in the 2011 Act and allows the Department to use the process before planning powers transfer.

The Chairperson: One concern from some community groups is that it is only for article 31 developments — that is, major large developments. Is that right?

Ms I Kennedy: No. The pilots have used major large schemes, but the intention is that it would be significant developments. It would not necessarily be only article 31-type applications.

The Chairperson: How do we define "significant"?

Ms I Kennedy: In subordinate legislation, which we will want to consult on and bring back to the Committee, we will have to set out where we feel those thresholds would be, bearing in mind some of the comments that have been received. Obviously, it will depend on the scale of the development. For smaller local developments, there may not be the same requirement to consult the community. We are working to find that level.

The Chairperson: People also mentioned the prospect of third-party right of appeal. Has the Minister produced a paper for consultation yet, as he promised?

Mr Kerr: The Minister commented on this recently. His view is that he is keeping an open mind on third-party appeals. In fact, I think that he indicated that he has some sympathy. However, he wants to see how, as Irene described, the front-loading approach that we are bringing through reform works out in practice. In theory, if front-loading is a success, there will not be any need for third-party appeals because proper community engagement will have been brought in at an earlier stage. I believe that that is the right way to do it, and if we can make that work, it is a lot better than a third-party approach at the end. In a way, it is almost a system that does not work because there has to be that check at the end. If it works effectively, hopefully, third-party appeals will not be needed. That is the current position.

The Chairperson: Angus, given human nature, you will never win everyone over. Some people will still want to object and have the opportunity to have their say at the end of it.

Ms I Kennedy: That opportunity will still be provided once an application comes in.

The Chairperson: If an application is approved, people will want the same level playing field as the applicant and to have their say about it, but that is another story.

Mr Boylan: I welcome the provision because, until we review and renew our area plans, it is a good opportunity for communities to get involved. It is possibly an opportunity for capacity building for the community and voluntary sector to learn the system and contribute to it. I take your point about third-party appeals. The front-loading system is grand if the majority of people are content with what is coming forward. I will leave third-party appeals to another day, Angus. We have discussed that on a number of occasions.

Mr Kerr: That is an important point that I have not mentioned about the planning process, which is the key area of front-loading, even before you get to pre-applications. If we can engage people properly in that, it will really make a difference. That is where the system has failed in recent years. People become aware of planning issues only when there is something on their doorstep, and they need to become engaged much earlier and realise the importance of it through the forward-planning aspect.

The Chairperson: It also makes the planners' job much easier.

Mr Kerr: Absolutely. That is another reason.

The Chairperson: They have road maps to work on. Are members content with the Department's response?

Members indicated assent.

The Chairperson: We move to clause 6. The majority of respondents were opposed to this clause as they felt that it was unworkable in practice and would lead to increased legal challenges and would delay planning applications. They said that it was unclear how the Department could assess economic advantages or disadvantages, that the clause appears to be attempting to use the planning system for a purpose for which it is not designed and that there is no legal mechanism to ensure that the claimed benefits will happen. I ask the Department to respond, and I have a few questions.

Mr Kerr: In our discussion on clause 2, we touched on this issue. The intent of clause 6 is to confirm and clarify that economic advantages and disadvantages are a material consideration to be taken into account in the determination of planning applications. It is not the intent that it should be given greater weight or determinative weight than the other considerations. It is simply to clarify that it is a consideration in the determination of applications.

The Chairperson: People are not worried about additional weight. People are worried about pitching one person against another. Lord Morrow gave an example of an individual building an extension and blocking someone else's light. The developer could say that that gives him an economic advantage, but the next-door neighbour could say that that causes him disadvantage.

Mr Weir: Is that not the case with pretty much any application that anyone objects to? Objectors are essentially pitched against developers, whereas this may mean —

The Chairperson: It will now be in law that they have to look into it.

Mr Weir: No, sorry, with respect, all it may do is increase the grounds on which there is competition or contrast, but that is what happens at present. Quite often, the argument runs as follows. Objectors will say that they are opposed to an application because it will mean a loss of amenity and will create a range of problems. That conflict is pitched between a developer and an objector. All clause 6 does is to add a further ground on which there may be such a clash, whether that is right or wrong. It is a false argument to say that this will lead directly to a clash. It may add an additional layer, but in many ways, those clashes are the bread and butter of the planning system as it is.

Mr Hamilton: Without wishing to seem opposed to what my colleague said, does that not happen in certain cases anyway? If a major supermarket wants to make an application, it has to produce a retail impact assessment, so there is already an assessment of economic advantage and disadvantage. A lot of recent applications — admittedly, article 31-type applications — have been approved, and others have been rejected because of disadvantage. It already happens explicitly in certain cases.

Mr Kerr: Yes, it does. That is correct.

The Chairperson: I will follow up on Peter's point. If you are already weighing up the advantages of each side of the coin, why do we want to put it into primary legislation? Many respondents suggested that the clause should just be scrapped. What harm would it do if we took the clause away?

Mr Kerr: I will go back to our earlier discussion. The purpose of the clause is to confirm and clarify, in a legislative sense, not that economic considerations or advantages and disadvantages have more weight but that they have weight and are material in the consideration and determination of planning applications.

The Chairperson: Peter, do you want to come back in?

Mr Weir: No; I have made my point.

Mr Boylan: We have already discussed the issue under clause 2. Many of us, as councillors, have sat in meetings at which economic considerations were discussed, but it was neither here nor there with regard to the decision-making process. It is about time that we looked at that. That is what we are saying, and that is what should come forward here. People need to get away from the idea that it is a determining factor in the assessment and decision-making process with applications. I reiterate my earlier point: no arguments are coming forward from anyone in relation to that, which should be taken into consideration. That is my view.

Mr Elliott: Can you explain the wording:

"considerations relating to any economic advantages or disadvantages".

I assume that that happens anyway. Could the words "economic aspects" be used? The current wording seems a wee bit clumsy. Why have those words been used? Why is it pitched in that way?

Mr Kerr: It is to clarify the point that someone has already made. It is not just about economic considerations being a positive contributing factor towards dealing with planning applications. There can be circumstances in which there are significant economic disadvantages to a proposal. Sometimes, those economic disadvantages lead to a decision, one way or the other, in assessing a planning application. Arguably, if you had a more generic definition, you would have been arguing that both of those be included. It is to clarify that there are advantages and disadvantages.

Lord Morrow: Do you think that the clause does that, Angus?

Mr Kerr: In the way that the clause is written, I think that it does. That is the intention.

The Chairperson: The Royal Town Planning Institute is concerned about the clause. If planners are concerned, we need to be concerned.

Mr Kerr: As we discussed and recognised, there are a number of concerns. It is important that those are addressed through the way in which it is implemented and operated, and by defining and explaining what it means to the planning system through the strategic single planning policy statement and further guidance. That will allow that enhanced understanding of what is meant and how it will work.

The Chairperson: The single planning policy statement is going to be massive: it will be the size of a book. You will have to explain all that.

Mr Kerr: I hope not. The Minister has asked me to produce quite a slim document.

The Chairperson: How will you do that? Even explaining the advantages and disadvantages will require you to write pages and pages.

Mr Kerr: We will need to figure out the key elements and put those in strategic policy. We also need to figure out what should go into the guidance. Not everything will go into the strategic planning policy statement. It is important that the strategic policy intent is in the planning policy statement, but there will be a need for more detailed guidance on the procedures involved, and so on.

The Chairperson: If I recall correctly, in the evidence session with Professor Geraint Ellis from Queen's, he talked about the lack of case law. He said that, over the past 40 years, the planning system had built up a lot of case law, whereas with this Bill, we will virtually be starting from scratch. We will need case law and that, perhaps, will mean many legal challenges. How do you answer that?

Mr Kerr: A body of case law has been built up around planning. If I understood correctly what Geraint said, it was that that case law would somehow not be valid as a result of this Bill. We do not accept that. A lot of the case law around planning is well established, and we do not feel that this provision cuts across that. It may be the case that some case law may build up around these clauses over time if challenges are made. We hope that that will not happen, but if it does, that is fine. The Department,

councils, and so forth, will learn from that, and it will become part of the planning case law that is associated with those clauses.

There is no issue with the way in which this clause comes forward in relation to existing case law. That is all fine and is established. In fact, existing case law will probably help in our understanding and explanation of how this will work in practice — for example, around the concepts that I spoke about earlier about public interest and the focus of the planning system.

The Chairperson: I will go back to what Tom said earlier. What is the rationale for bringing in clause 2? Are you addressing any particular problem?

Mr Kerr: As I said, there is a need to confirm and clarify in legislation that that is a material consideration.

The Chairperson: Someone may say that they cannot be turned down for a fantastic big complex or for fracking that will give us 40 years of energy supply. If they are opposed by an environmental impact assessment that says that such development will not be good for the environment, who will win?

Mr Kerr: As —

The Chairperson: I do not want to say that they will "win", but what side would you go with?

Mr Kerr: As is the current situation, the planning authority, or the Department of the Environment for major applications such as that, will have to balance all the various material considerations, whether they are environmental, economic or part of the development plan, along with the views of objectors and consultees, and arrive at the right planning decision in the interests of the public. It is similar, I suppose, to the approach that was taken with Runkerry, where, to put it crudely, the economic arguments probably had a bit more weight. Another example is Rose Energy, where perhaps environmental issues came to the fore. Although those are massive oversimplifications of the assessments of each of those applications, I use them for illustrative purposes.

The Chairperson: A lot of people simply say that the clause is not workable and should be taken away. What do your planners feel about it? Do they feel that this will make their job more difficult?

Mr Kerr: We engage with planners all the time at the operational end. Simon is from the strategic team. There are issues and concerns, but we will work through those in the preparation of guidance and policy.

Mr Simon Kirk (Department of the Environment): A proper planning decision must take account of all material considerations. When we deal with large-scale article 31 applications, we will take economic impacts into consideration. However, that always has to be balanced against other factors. The current legislation requires us to take into account the development plan in so far as it is material, and all other material considerations.

We have been doing that, and Angus gave two examples: one where there was a decision to approve, when the economic aspects were taken into account and considered to have significant weight; and another case where the Department clearly understood the economic arguments, but environmental concerns outweighed them. So, in the work that I am doing, and from my staff, I do not have any difficulties.

The Chairperson: I have certainly heard that some planners have privately expressed concerns about the clause. If you put that in primary legislation, it will be interpreted that economic considerations are an important aspect of the decision-making process.

Mr Kirk: In many applications, it is an important consideration. In others, however, when the proposal complies with policy and there are no issues, it is simple to deal with because approval would be given. It becomes more of an issue with applications that are finely balanced between approval and refusal — for example, Runkerry or Rose Energy. Another example is the proposal for a large waste management facility at Magheramorne quarry. There were clear economic gains in favour of that application, but the environmental impacts on Larne lough won out.

The Chairperson: However, the legislation makes it easier for developers to challenge a decision and say, for example, that a refusal will bring economic disadvantage to an area.

Mr Kirk: No more or less than is currently the case. Case law is clear: a planning authority must take account of all relevant material considerations. In the final analysis, however, the weight that is given to those is a matter for the decision-maker. If you can show that you took all material considerations in account, logically balanced them against each other and arrived at a balanced decision, the courts will not intervene because judicial review is a challenge against process rather than a subjective planning judgement.

The Chairperson: If we are doing that already, why do we need this extra clause?

Mr Boylan: To be fair, Chair, that question has been asked many times.

The Chairperson: Are you not deliberately sending out a signal that this is really important?

Mr Kerr: No, because there is nothing in the clause that states that any more weight is to be given to economic considerations. That is important and is a clear policy that the Minister and the Department are behind.

The Chairperson: We will stop there. We made quite a lot of progress. Thank you very much for coming, and we will see you next week.