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Planning Reform: Draft Planning (Northern Ireland) Bill 2012

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The paper will give an over view of the clauses of the draft Bill, and briefly considers whether or not these show any difference in relation to similar provisions provided for in the Planning (Northern Ireland) Act 2011, and subsequently the Planning (Northern Ireland) Order 1991. While this paper introduces the draft 2012 Planning Bill, it is by no means definitive in its content.

18th June 2012

Key Points

The aim of the Planning (Northern Ireland) Bill 2012 (the 2012 Bill) is to accelerate the introduction of a number of reforms to the planning system contained within the 2011 Act.

It brings forward amendments to The Planning (Northern Ireland) Order 1991 (the 1991 Order) which reproduce provisions in the 2011 Act and is intended as an interim measure until it is possible to fully commence the 2011 Act at which point it will be repealed.

The Bill reproduces key reforms contained within the 2011 Act which will lead to:

- Enhanced community involvement through the production of a statement of community involvement.
- Faster processing of planning applications provided for in Clauses 9 and 22.
- Faster and fairer appeals system which is brought about by Clauses 10, 11 and 20.
- Simpler and tougher enforcement under Clauses 15, 19 and 23.
- Enhancement of the environment by amending the Department's sustainable development duty to include promoting well-being and achieving good design (Clause 2).
- Other measures include giving the Department power to grant aid non-profit organisations, power to decline to determine subsequent or overlapping applications, and the power to repeal provisions within the Bill.

Executive Summary

The Department of Environment (the Department) began a major programme to reform the Northern Ireland planning system with the introduction of the Planning (Northern Ireland) Act 2011 (the 2011 Act) which received Royal Assent on 4 May 2011.

The 2011 Act gives effect to the whole process of local government reform which includes the transfer of the majority of planning functions and decision making responsibilities to district councils. The 2012 Bill reproduces key reforms contained within the 2011 Act which will lead to:

- Enhanced community involvement through the production of a statement of community involvement within one year of commencement of the clause.
- Faster processing of planning applications by streamlining processes to speed up decision making and deliver development; provided for in Clauses 9 and 22.
- Faster and fairer appeals system which is brought about by Clauses 10, 11 and 20; for example, allowing the Planning Appeal Commission to award costs where the unreasonable behaviour of one party has left another out of pocket.
- Simpler and tougher enforcement under Clauses 15, 19 and 23, with an increase in maximum level of fines, the use of fixed penalty notices, and the power to charge multiple fees for development that commenced before the planning application was made.
- Enhancement of the environment by amending the Department's sustainable development duty to include promoting well-being and achieving good design (Clause 2), ensuring the enhancement of the character of an area (Clause 19), and extension in the aftercare conditions in relation to mineral planning permission under Clauses 8 and 13.

Other measures include giving the Department power to grant aid non-profit organisations who promote understanding of planning policy, power to decline to determine subsequent or overlapping applications, and the power to repeal provisions within the Bill.

According to the Department, the policy underpinning the 2012 Bill is the same as the 2011 Act which has already been subject to an equality impact assessment, public consultation in 2009, and Assembly scrutiny in 2010 to 2011; therefore suggesting that there is no need for further consultation.

Accordingly, this paper will give an over view of the clauses of the 2012 Bill, and will return to some of the issues that were discussed during the consideration of equivalent provisions within the 2011 Act.

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Introduction

The Department of the Environment (the Department) is delivering a major programme to reform the Northern Ireland planning system. This began with the introduction of the Planning (Northern Ireland) Act 2011 (the 2011 Act) which received Royal Assent on 4 May 2011.

In brief the 2011 Act sets the legislative framework for a reformed planning system in Northern Ireland with the promise of a “speedier, simpler and more streamlined” decision-making process along with more effective enforcement controls. The reform proposes a “development management” rather than a “development control” process, introducing a shift to spatial planning which moves the emphasis away from planning as simply regulatory practice narrowly focused on land use, to planning as an activity that is both integrated with other local government services and is focused on delivery.¹

It also gives effect to the whole process of local government reform which includes the transfer of the majority of planning functions and decision making responsibilities to district councils, with the exception of regionally significant proposals, which will remain with the Department of the Environment. Planning applications will be dealt with by Councils and the “Planning Service” as it was known will be replaced by five “Planning Areas” designed around the proposed 11 council clusters.²

As explained by the Department in the explanatory notes, the transfer of planning functions to councils is intended in 2015 in line with the Executive’s commitment to reform local government. However, in the interim, the Executive has agreed to the drafting of this Bill to accelerate the introduction of a number of reforms to the planning system contained within the 2011 Act. The Department informs that the 2012 Bill will make legislative changes to improve the efficiency and effectiveness of the planning system agreed by the previous Assembly available to the Department in advance of the transfer of planning functions to councils. It therefore brings forward amendments to The Planning (Northern Ireland) Order 1991 (the 1991 Order) which reproduce provisions in the 2011 Act. The Department clarifies **that it is intended as an interim measure until it is possible to fully commence the 2011 Act at which point it will be repealed.**³

For clarification this paper refers to:

- The Planning (Northern Ireland) Order 1991 as ‘the 1991 Order’;
- The Planning (Northern Ireland) Act 2001 as ‘the 2011 Act’; and
- The Planning (Northern Ireland) Bill 2012 as ‘the 2012 Bill’.

¹ NIA, Research Paper: Planning Bill (1) Departmental Functions and Local Development Plans

<http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/environment/2011/cave0611.pdf>

² DOE, *Planning restructured for a new era* (April 2011) http://www.planningni.gov.uk/index/news/news_releases/planning-deagentisation.htm

³ DOE, Planning Bill 2012 Explanatory and Financial Memorandum

Overview

The intention of the Bill is to strengthen the planning system by providing faster decisions on planning applications, enhanced community involvement, faster and fairer appeals, tougher and simpler enforcement as well as a strengthened Departmental sustainable development duty.

According to the Department, the policy underpinning the 2012 Bill is the same as the 2011 Act which has already been subject to an equality impact assessment, public consultation in 2009, and Assembly scrutiny in 2010 to 2011; therefore suggesting that there is no need for further consultation.

Accordingly, this paper will give an over view of the clauses of the 2012 Bill, and will return to some of the issues that were discussed during the consideration of equivalent provisions within the 2011 Act.

The Bill reproduces key reforms contained within the 2011 Act which will lead to:-

Enhanced community involvement

Clause 1 of the 2012 Bill puts a requirement on the Department to prepare and publish within one year of commencement, a statement of its policy for involving the community in the delivery of its development plan and planning control functions. This addresses the fact that the 2011 Act did not contain any measure under s.4, stipulating a time frame for the production of a Statement of Community Involvement.⁴

Clause 5 requires Developers to consult the community before submitting major planning applications and demonstrate through the production of a report that they have done so. The prospective applicant must give 12 weeks' notice that an application is to be submitted and provide details of the application including a description of the development and address of the site. It is proposed that Regulations will dictate the minimum consultation requirements placed on the applicant. Additional requirements may be placed on a particular development if the Department considers it appropriate. During the consultation of the 2011 Act, under s.27 (Pre-application consultation), respondents expressed concern over the lack of requirements specified, especially in comparison with other jurisdictions.⁵ It would appear that Clause 5 of the 2012 Bill attempts to address this issue.

For more information on issues in relation to community involvement in the Planning Act 2011, please refer to the Research paper entitled [Planning Bill \(3\): Community Involvement](#)

⁴ Planning (Northern Ireland) Act 2011 s.4 <http://www.legislation.gov.uk/nia/2011/25/section/4/enacted>

⁵ NIA, Research Paper: Planning Bill (3) Community Involvement <http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/environment/2011/cave0911.pdf> and Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf

Faster processing of planning applications

This to be achieved by streamlining processes to speed up decision making and deliver development. Clause 9 includes the appointment of persons other than the Planning Appeals Commission (by the Department) to conduct inquiries and hearings into major planning applications and a duty in Clause 22 for statutory consultees to respond to consultation within a prescribed timeframe as agreed by the Department. However the issue that was raised during the consultation still applies, where respondents questioned whether an independent examiner, appointed by the Department, would be considered truly independent considering the final decision on regionally significant planning applications is taken by the Department.⁶

Faster and fairer planning appeals system

Clause 11 restricts the introduction of new material at appeal stage, so that any matter that was not before the Department when it made its decision cannot be raised. This allows the Planning Appeal Commission (PAC) under Clause 20 to award costs where the unreasonable behaviour of one party has left another out of pocket.

Clause 10 reduces the time limit for submitting appeals to the PAC from six to four months. While 65% of responses to the consultation were in support of this reduction, those opposed, including the PAC, referenced the experience in England where a reduction from 6 to 3 months was implemented and subsequently changed back due to an increase in appeals.⁷

While these proposals were suggested (and met with support) in the consultation of the 2011 Bill, concerns could be related to the cost systems in the rest of GB. The systems in England and Scotland are accompanied by extensive separate guidance which provides examples of unreasonable behaviour which can extend to the planning authority as well as to appellants. In its response to the consultation, the Department stated that it intended to introduce the award of costs into Northern Ireland and to issue guidance to accompany the commencement of the provisions,⁸ however it appears that the production of guidance has not been clearly put forward in the 2012 Bill.

⁶ NIA, Research paper: Planning Bill (2):Development Management, Planning Control and Enforcement <http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/environment/2011/cave0811.pdf> and Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf

⁷ Ibid (p.15)

⁸ Ibid (p.12)

Simpler and tougher enforcement

Clause 15 aims to introduce this through raising fines for a series of offences, some of which include:

- Raising the maximum fine for breaches of planning control or consents from £30,000 to £100,000;
- Raising the fine for damage caused to listed buildings to the statutory maximum;
- For continued failure to prevent damage, or further damage, the fine has increased to one tenth of a level 5 fine⁹ for each day it continues

Another approach is the use of fixed penalty notices, in Clause 19, as an alternative to costly and lengthy prosecutions through the Courts. The level of fixed penalty will be prescribed by subsequent Regulations, for which details have yet to be disclosed, however, the Bill offers a reduction of the amount by 25% if paid within 14 days.

Clause 23 gives the Department the power to charge multiple fees for development that commenced before the planning application was made. This mirrors with s.219 of the 2011 Act, which states that the amount will be determined at a later stage and will be included in subordinate legislation, however, the 2012 Bill does not appear to provide any more detail on this. This measure received general support by respondents to the 2011 Act consultation, as it was seen as a deterrent to those who flagrantly disregard regulations and advice, at the same time, concern was expressed in relation to the risk that unwitting offenders could be unreasonably penalised.¹⁰

Measures to enhance the environment

It was suggested in the responses to the 2011 Act consultation, which provided for a sustainable development duty in relation to the development of land and local development plans (s.5), that this duty should be extended to the entire planning system, particularly development management, as it is in England, Scotland and Wales.¹¹

The 2012 Bill aims to address this by strengthening the planning system with an amendment to the Department's sustainable development duty, where Clause 2 requires the Department to carry out its policy and plan making functions with the objective of furthering sustainable development and promoting or improving well-being, paying particular attention to the desirability of achieving good design.

⁹ A level 5 fine, as stipulated under article 5 of the *Fines and Penalties (Northern Ireland) Order 1984* (as amended by the *Criminal Justice (Northern Ireland) Order 1994*, article 3) equates to £5000.

¹⁰ Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf

¹¹ Ibid

Under Clause 18 the Department's consent must also be given to the felling of trees covered by a tree preservation order which are dying, this amends s.125 of the 2011 Act making dying trees no longer exempt from a tree preservation order.

Clause 16 strengthens the Department's responsibilities to conservation areas provided for in Article 50 of the 1991 Order by ensuring the enhancement of the character of an area, and where enhancement is not possible, the preservation of the character must be provided for, this is similar to s. 104 of the 2011 Act.

Clause 17 adds additional provision to the control of demolition in conservation areas, by extending it to include the partial demolition of buildings, which is similar to s.105 of the 2011 Act. This addresses the problems which emerged as a result of the landmark *Shimizu ruling* in the courts, which meant that partial demolition of non-listed buildings in conservation areas did not require consent.¹²

Clauses 8 and 13 extend the aftercare conditions in relation to mineral planning permission. Clause 8 (similar to s.53 of the 2011 Act) adds "use for ecological purposes" to the list of uses for restored land; while Clause 13 extends provisions within s.53 of the 2011 Act allowing the Department to impose aftercare conditions where a mineral planning permission has been revoked or altered.

Summary of remaining Measures

Clause 21, similar to s.225 of the 2011 Act, gives the Department power to grant aid non-profit organisations whose objectives include furthering an understanding of planning policy; this process will no longer require approval from DFP which was originally a requirement under s.120 of the 1991 Order.

Clause 4 amalgamates provisions provided under sections 41 and 45 of the 2011 Act, which requires a development order to stipulate the publicity requirements for applications, and that applications must not be considered if the requirements are not met. This Clause also allows for a development order to prescribe a certain period before the Department can determine an application. Similar amendments are made to Schedule 1 of the 1991 Order in relation to listed buildings consent.

Clauses 6 and 7 give the Department the power to decline to determine subsequent or overlapping applications. Clause 12 allows the Department to make a change to a planning permission already granted on application, and amend or remove conditions or impose new ones.

Clause 14 allows for any sum payable under a planning agreement to be made to any Northern Ireland department and not just the Department of Environment.

¹² Government Response to the Planning Reform Public Consultation July - October 2009 (p.70): http://www.planningni.gov.uk/index/about/government_response_final.pdf

Clause 24 allows the Department to repeal provisions in the Bill, these must be approved by the Assembly. Please note that the explanatory notes refer to this provision as Clause 25, when in fact in the draft Bill it comes under Clause 24.¹³

Clauses 25 to 27 deal with the interpretation, commencement and short title.

Further information and background

For further information and background on the 2011 Act please refer to:

- Research paper- *Planning Bill 2011 (1): Departmental Functions and Local Development Plans*
<http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/environment/2011/cave0611.pdf>
- Research paper- *Planning Bill 2011 (2): Development Management, Planning Control and Enforcement*
<http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/environment/2011/cave0811.pdf>
- Research paper – *Planning Bill 2011 (3): Community Involvement*
<http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/environment/2011/cave0911.pdf>
- Research paper – *Planning Bill 2011 (4): Implementation, Performance and Decision making: Issues of Capacity, Delivery and Quality.*
<http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/environment/2011/cave1211.pdf>

¹³ DOE Planning Bill (Northern Ireland) 2012(p.15) and DOE Planning Bill (Northern Ireland) 2012 EFM (p.12)