Northern Ireland
Assembly

COMMITTEE FOR THE ENVIRONMENT

OFFICIAL REPORT (Hansard)

Planning Bill: Development Management, Planning Control and Enforcement

18 January 2011

NORTHERN IRELAND ASSEMBLY

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Planning Bill: Development Management, Planning Control and Enforcement

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Members present for all or part of the proceedings:
Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Willie Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Ms Suzie Cave	)	Research and Library Service
Dr Geraint Ellis	)	Queen's University Belfast
Ms Lois Jackson	)	Department of the Environment
Ms Irene Kennedy	)	
Mr Angus Kerr	)	
Ms Catherine McKinney	)	
Mr Peter Mullaney	)	
Ms Maggie Smith	)	

The Chairperson (Mr Boylan):

We will now receive a briefing on the Planning Bill from the Assembly's Research and Library

Service. I welcome Suzie Cave from the Research and Library Service and Dr Geraint Ellis from Queen's University. We normally give about 10 or 15 minutes for presentations, but this may take a bit longer. We need proper and formal scrutiny of the Bill.

Ms Suzie Cave (Research and Library Service):

Thank you. You will remember that, last Thursday, Dr Ken Sterrett from Queen's gave a presentation on the first research paper, which looked at the first two Parts of the Bill. This morning, Dr Geraint Ellis from the QUB school of planning, architecture and civil engineering will take you through the second of the four research papers, which looks at development management, planning control and enforcement. That links quite well with the sections that the Department will discuss this morning and this afternoon. This afternoon, we will also look at our third research paper, which concerns community involvement. Geraint will answer any questions or queries that you may have on that topic then. Dr Ruth McAreavey from Queen's will look at the remaining Parts of the Bill at next Thursday's meeting.

Dr Geraint Ellis (Queen's University Belfast):

Thank you. I will focus on Part 2 of the legislation. It deals with what is now called development management — it used to be referred to as development control — which is essentially the process of evaluating planning applications. Essentially, the Bill consolidates all existing legislation in that respect and, as you will have seen, re-crafts it to make provision for district councils to take the majority of the decisions on planning applications, with some important exceptions for major development.

There is a big distinction in that there is a subtle change of culture and approach. Previously, it was called development control, which was a highly regulative process of getting a planning application and really just refusing or giving permission. The Bill tries to move to a system of development management, as in England, Scotland and Wales. Development management is supposed to involve working with applicants a little bit more to try to secure the best sort of development for an area and, in particular, to ensure that each application is dealt with appropriately according to the scale and other needs of the applicant. That might include, for example, a lot of pre-application advice. It might mean a commitment to both the applicant and the Department or the district council to have certain things in place to ensure that the timetable for evaluating the application is adhered to and that provision is made for consultation. It is more about management and facilitating the right type of development, rather than just a yes/no

process, and a lot of things follow from that.

A major element of the Bill is the provision for district councils to start to make a lot of the decisions on applications. However, there is a strong proviso in that a lot of powers are reserved to the Department. Some scrutiny may be needed to monitor the progress of those powers and how they are used. The bedrock of the system is an amendment that was made in 2006 to ensure that every planning application is made primarily in line with a development plan, which we call a plan-led system. However, there is a key question in that, although the legislation to provide for the plan-led system was put through in 2006, it has not yet been commenced. You may want to ask the Department when that is likely to occur, because that provision is critical to the operation of the new system that is envisaged by the legislation.

The legislation makes provision for a number of new issues, the more contentious of which I will come back to. The key element in the development management process is dividing all applications into two types: major development — criteria for that will be forthcoming in further guidance — and minor development. Major development applications will go straight to the Department. It has the power to hold a local inquiry if need be. The criteria for the local inquiry are not explicit in the Bill. Minor development applications will go to district councils. That is the first major distinction central to the Bill. In the case of major development, there will be an onus on the applicant to undertake a pre-application consultation with various groups. As we propose to deal with all the consultative elements this afternoon, I will put that to one side.

The district councils will be dealing with minor development, and the Bill gives them powers to delegate some planning applications entirely to officers to deal with — the most minor developments — but there is no guidance in the Bill about what is appropriate. It will be left to district councils to clarify what they think should be delegated to their own officers.

The Bill introduces a new offence of the partial demolition of a listed building, which closes a loophole that appeared as a result of case law. It introduces a fixed penalty notice for non-compliance with planning control. That essentially means that the Department can respond more quickly to enforcement issues. It does not necessarily have to rely on the courts.

Significantly, the Bill reduces the time for appeal on a planning application is reduced from six months after the first decision to four months. The idea is to reduce the number of appeals,

but it is useful to reflect on the experience of England and Wales, where this was introduced in 2003. They had to return to six months for most appeals after the number of appeals actually increased. People would put appeals on before the issue was sorted out, just to safeguard their position. It would be well worth asking the Department about that.

Finally in the new provisions, the Bill introduces the concept of simplified planning zones. This is a mechanism for economic development whereby an area can be designated so that certain types of development in it will not need planning permission. London Docklands is a classic example of that.

Those are the major new issues in the Bill. Some questions arise over what is not in the Bill, or what has been left out after the consultation. The first one I want to highlight is that, at the minute, the planning legislation provides that the objective of the plan-making process is to contribute to the achievement of sustainable development. However, that is isolated only to plan-making. It seems incongruous that the development management process does not also have that objective. It may follow through very indirectly, but that would equalize that. The whole of the planning system should perhaps align itself to the objective of contributing to the achievement of sustainable development.

In the consultation on planning reform, the Department also raised the possibility of introducing what it called performance agreements between the Department and applicants for major development. Again, this is a mechanism that has been introduced in England, Scotland and Wales. For very major developments, the Department would sit down with the applicant and agree when, for example, it would get the application through or when it would need certain information. It is a commitment by both parties to handle the application in a timely manner. That has been left out of the Bill, and it may be worth asking the Department why.

Another thing left out of the Bill after a lot of objections in the consultation was discretion on the part of Planning Appeals Commission (PAC) to determine the type of an appeal. This was seen by people who objected to it as a removal of the right to appeal. At the minute, everyone has a right to an oral hearing. The proposal was that it would be left to the Planning Appeals Commission to decide that. In some cases, they might have decided that a written representation was applicable, just to speed things up. The Department has decided not to go ahead with that, so there will still be a right to a public hearing. I know that members are interested in the issue of

third party appeals, and the Bill does not provide for that. We hope to return to that issue in more detail this afternoon.

The Department has also agreed not to go ahead with criminalisation for breaches of planning control. It has left that as a discretionary system. Our paper highlights some other options for that, for example, what happens in the Republic of Ireland, where it is criminalised but with an onus on, naturally, the person who is responsible for the breach of planning control.

The Department decided not to go ahead with what it calls certificates of the initiation of development and the completion of development, which is a process that started in Scotland. Planning permission can expire after four or five years, so the process was going to be that someone who had planning permission would have to notify the Department when they started the development, and on completion. The idea was that that would help with the enforcement of planning conditions. The Department has decided not to go ahead with that, subject to further review of what is happening in Scotland.

Finally, in consultation, the issue was raised of a provision to be able to award costs for unreasonable action in planning appeals. Under such a provision, the costs incurred by the other party could be awarded if the Department or even an applicant acted unreasonably in an appeal. The Department decided not to go ahead with that, and it might be worth talking to the Department about why.

Those are the key things by way of an overall summary, and I am quite happy to talk about anything in the paper.

The Chairperson:

Thank you, Geraint, for your research paper. There is a lot in it, and I will pick up on some of what you said. You highlighted specific questions for the Department, but I want to pick up on what you said about the hierarchy — the major and local development. Some of the people who have responded already are in need of clarification and would like to have seen a definition before now. I know that there is one in our papers — there are definitions of "major development" and "regional significance". However, it also refers to local development, and some of the respondents are still unsure. Would you like to comment? Those respondents would need to have seen a more definitive definition.

Dr Ellis:

I have not seen that paper.

The Chairperson:

Would you like to comment on that for the benefit of members?

Dr Ellis:

There is a difficult balance to be had, because it is important that the Department retains central control of major development. It is worth highlighting the difference between what is proposed in the Bill and how the process is dealt with in Wales, Scotland and England. There it is, essentially, less defined, and it is left to the central Department's discretion to call in issues. That is a bit more flexible.

Recently, the Department there decided not to call in the largest planning application that was ever dealt with, which was for a major regeneration site in the Wirral. The local authority is dealing with that, for whatever reason. There is a lot more discretion in that the Department works with the district councils, rather than taking applications off them. There is a balance to be had between the discretion and the certainty that comes along with this issue. There will always be issues about the criteria that are applied. I have just seen those criteria, so I have not had a chance to look at whether any issues arise from them.

The Chairperson:

Last week, the issue of independent examination raised its head, and we went through that. You talked about the role of the PAC in determining the type of appeal or the type of hearing. The Assembly debated the PAC's role and the question of independence and whether it provided value for money. In some areas, it has come up to the grade, but, in others, there is still a question of whether it is totally independent. Any member of the Committee who has been a councillor and gone through the appeal process knows that the PAC follows the same structures as the Planning Service. It is really only an assessment of a planning application, and it goes through the same process. Do you not feel that we need seriously to look at the whole issue of independence and whether the PAC is the body to make those decisions? What are you views about how that happens elsewhere and whether that is something that we need to look at?

Dr Ellis:

I was not aware that there was a question about the independence of the PAC. My impression was that the PAC was seen as being relatively independent, particularly because its members are appointed by the First Minister and deputy First Minister. That is akin to the situation in the Republic of Ireland, where An Bord Pleanála is completely independent of the Department.

There are differences; the Minister here has maybe more control over some decisions compared with the Republic. However, the PAC is far more independent than, for example, the Planning Inspectorate in England and Wales, which is appointed by the Minister. There is always a difficult question: they are really acting on behalf of the Minister, so there is less independence in England and Wales.

That highlights an issue in this legislation, in that when there are major inquiries there may be a stress on the PAC as the body for handling appeals and inquiries. The legislation makes provision for the Department to appoint an independent examiner on different issues. A lot of people expressed concern about that during the consultation, because they thought that the PAC had the expertise and neutrality, and that that should be the issue. There is an issue whether there will be independence if the Department is appointing the independent examiner, or at least whether people will see it to be independent. That is a new provision.

The Chairperson:

We will move one from that. Obviously a key issue for people, through the responses already received, is having the proper opportunity to consult and contribute as opposed to the process being just a talking exercise. Obviously, it is down to the criteria and what they are assessed against. If we go down the route of saying that the PAC is the body to do that, do we need to look again at the criteria and what they are assessed against?

Dr Ellis:

The key thing is that if there is a public inquiry for a major development, the PAC will hold the inquiry. The report is then sent to the Minister, but is not binding. That is the provision that maybe needs to be looked at: whether that report is binding on the Minister.

The Chairperson:

That issue also came up last week with regard to the PAC looking at a matter and its going back

to the Department. We maybe need seriously to look at the whole independence of that, and whether it is correct.

Mr Weir:

I have less of a problem with the independence of the PAC, but more with its efficacy. It probably goes to a wider issue with the PAC in that a lot of concerns were raised, particularly about major applications. There seemed to be the suggestion, certainly a while ago, that it could really handle only one at a time, and there were big long delays. I have a greater concern about that, rather than about the PAC being officially independent.

The Chairperson:

I agree, and that is an important point. Now that we are looking at the issue, we need to ensure that the process is right.

Mr Weir:

I agree. If we are looking at planning legislation, it would seem not to be sensible to look at the process of planning and planning application without also taking into account the mechanisms that are in place on the appeals side. The two are interlinked.

The Chairperson:

I agree, and we need to look at that now during this process rather than wait, unless we can bring that in under secondary legislation. However, the question is open.

You mentioned awarding of costs. Should that be in the Bill?

Dr Ellis:

I do not know. I am not a lawyer, and do not know whether that needs legislation. I would have thought that it does. If one aim of planning reform is to cut down delay, in some cases you can have an appeal for a delay for whatever purpose, and an award of costs might cut that down and speed up the system.

The Chairperson:

Do you think that, if we roll out the secondary legislation, there is a case — and I am speaking in general now — that it will need to go to consultation, or can we include whatever we want on the

face of the Bill, in the knowledge that secondary legislation will flow from it subsequently? As opposed to going down the road where we understand that we need secondary legislation, rather than getting into the whole process of consultation. Will we still need to consult on that, or is it an issue that we need to look at?

Dr Ellis:

It depends on the issue. In terms of the award of costs, the Department has gone out to consultation. That was involved. All the other issues you would have to look at on a piece-by-piece basis. The Department has committed to some more work and consultation on a number of things, for example on third party appeals. That puts that off. There are some issues that it has highlighted.

Mr McGlone:

I have read your paper. You refer to "pursuit of consistency" and provision of guidance for councils on when that should occur. As I read through elements of the Bill last night, and one of the things that intrigued me was the proposal by the Department for joint actions by councils. Those of us who have served on councils are always intrigued by the notion that some constituents draw this very issue to our attention: consistency in the application of planning policy between councils and the differences that they perceive exist in the interpretation of it. There should be guidance there already: it is called the policy. It boils down to interpretation.

I am even more intrigued where there has been the development of a joint policy between two or more councils, whether or not they are termed "local policies". That could add enhanced focus to the lack of consistency between councils. Councils might come to agreement on a policy, whatever it might be, but then go off to interpret it slightly differently. What is your thinking on that?

The guidance will only be as good as the people who interpret it. Essentially, PAC determinations usually lead to clarification and further determination of policies. However, those PAC decisions are also down to determination, because there can be slight nuances between individual decisions. Can you expand on how that should be done by the Department?

Dr Ellis:

Under the new system, where most planning decisions will be made by district councils, one of

the key roles left to the Minister is to ensure reasonable consistency. It becomes his prime role then. It is a matter of degree, because part of the emphasis of this Bill is to give local democratic control to district councils. That control will involve slight political interpretation of things.

We want to uphold the right of a council to take its own democratic decision on things, but we do not want it to act unreasonably. I would have thought that, if a council were acting more unreasonably than others with regard to a policy, there would be an opportunity for judicial review. While keeping democratic control of decisions, for acting against unreasonable decisions we are left with judicial review to uphold that.

Mr McGlone:

That is precisely the point. The sorts of people that I represent by and large do not have the money to go to judicial review. That is for the people with the big coupons.

The second thing is that this needs more clarity and direction. We are moving from a situation where there are, potentially, six divisional planning offices and six interpretations to one where there are potentially 26 interpretations. That allows for a wider scope of interpretation, and that is a diplomatic way of putting it.

I would rule out judicial review for most cases. People just do not have the finance to do that. Young couples starting out in life are barely able to gather up enough to pay the mortgage, without thinking about judicial reviews which may or may not be successful. Do you agree that it is for the Department to build in a greater implementation of consistency, however it is done? From your academic experience, are there areas in which that is done? If so, how is it done?

Dr Ellis:

Applicants always have the right to an appeal. One of the functions of an appeal is to make sure that there is consistency. If you are objecting and you think that it is unreasonable, there is no right to an appeal. A third party appeal can help with consistency if you are an objector to an application. The appeal and judicial review are really the only conventional mechanisms in planning for keeping consistency. There is the ombudsman as well, I suppose.

Mr Weir:

Patsy is right. I suppose he is looking at it from the angle of the punter, for want of a better word.

I would have thought that the significance of the judicial review in this process is less the actions that are likely to be taken by an aggrieved person and more the potential constraint that will apply to councils. If the advice that a council gets about taking a particular decision is that it will leave it open to judicial review, that is more of a constraint. Ensuring consistency while allowing a degree of variation for local circumstance is a very difficult circle to square, because of attitudes and the needs of an area. What happens in Magherafelt, the needs of people there and what is seen by its public representatives as being in its best interests from a planning point of view may vary from what happens on the ground in North Down. It is about trying to strike a balance between allowing for that bit of flexibility and having consistency. That will be very difficult to get absolutely right.

Mr McGlone:

It will.

You rightly referred to the PAC. Another issue for some people is that, depending on the planning consultant, it can be a very costly experience. To broaden the theme of six divisional planning offices and how they interpret planning decisions, you move, in reality, to 26 councils at the moment. Therefore, there is the potential to have different levels of consistency multiplied. The PAC will be very busy in those circumstances.

Dr Ellis:

There is a shift in almost the culture of the planning system because the Bill is trying to create local control. That may be a high democratic principle, but, as a result, there may be more accusations of inconsistency. It is about getting a balance. One person's inconsistency is another's local democratic control. It is the principle of putting it to the councils, and it is inbuilt in the legislation that, clearly, the members need to take a view. There may be ways of safeguarding that. The key element, in terms of inconsistency, is to have a very robust, well defined and evidence-based local policy. Some of the other papers talk about linking planning policies with community strategies. If that is right, the plan for Magherafelt should be right for that area, and the same for North Down. If the local plan process works as well as it should, some of these issues should go out. The whole thing is not about development management and plans; it should work as an integral system. That is the idea for how it would work.

Mr B Wilson:

The Planning Service is totally biased in favour of development and against local communities, so I am very concerned that the third party appeals proposal has been left out. That was one way in which we could have redressed the balance. As far as I can see, there is nothing in this legislation that will help local communities that are objecting to planning applications.

My second point is that while in principle we all agree that planning decisions should be made by the local community and the local council, I am not clear how we will do that. The power will be given to the local council, but will that power be exercised by the full council? Will the council have a planning committee? What safeguards will there be to stop lobbying? We are lobbied all the time about planning applications, but we are only consultees, so it is not all that significant in the end because applications are dealt with under planning regulations.

However, if we have local councillors under tremendous local pressure from local developers, how will that be dealt with? How does that operate in, say, Scotland? How are councillors protected? I assume that when you go into a council meeting to hear a planning application you have no contact with the applicant before you deal with the application — you go in with a clean, clear mind, having no interest or bias. How can that situation be retained and protected? What safeguards are in the Bill to protect the integrity of the planning system?

Dr Ellis:

Those things are generally not dealt with by planning legislation, but by local government legislation to do with probity, codes of conduct, expressions of interest and so on. That does not tend to be a problem in England, Scotland or Wales. There are not widespread accusations of corruption.

There may be an issue that third party appeals are a provision that members want to introduce as a safeguard or a transition, because people have to make a shift of trust to district councils. That might be an issue. With regard to going in with a free mind, what the legislation does that is new is to give the applicant an opportunity for a pre-determination hearing — to actually go to the council to put his case and say what he wants to do with the development.

That clause is a genuinely good idea, because councils will then be making decisions with a

fullness of information. However, if you look closely at the Bill, it says that the council can exclude the public if need be. So, there may be something in that provision to keep openness, and that it is not just the developer who goes in to meet the council, but everything has to be public. At the minute, it is going to be at the council's discretion who attends those meetings.

Mr B Wilson:

Will the decision be made by the full council?

Dr Ellis:

That, I think, is ultimately up to the council. The normal state of affairs is that a subcommittee deals with planning applications. In some circumstances, major developments might go to the main council or the issues of that subcommittee might have to be endorsed by the main council. So, it is really up to the council. In some cases, they have just a cabinet member dealing with planning.

Mr Weir:

I may be able to shed a bit of light on that, because that was an issue when we were looking at some of the review of public administration stuff that was looked at by policy development panel A. Belfast City Council is in a slightly different situation with a planning committee. The difference between us and other parts of the UK that have used this, and used it reasonably well, is that they tend to have pretty large councils, and therefore they delegate planning to a subcommittee.

The problem is that once you have planning powers, you come into more or less a judicial position. As a councillor, you cannot get representations and meet applicants or objectors. You have to remain aloof from that process. Given the size of councils here, particularly on the basis of the 26, the great likelihood is that you would have full council sitting for planning.

If three Bangor West councillors were on the planning bit and could make no public comment on a planning application and could not meet objectors or an applicant, yet four of their colleagues could and were all over the local press, giving their views and winning local brownie points, there would effectively be a two-tier councillor system. My guess is that almost certainly, particularly because we do not operate a cabinet system in Northern Ireland, the entire council will be the planning authority so that all councillors are on a level playing field.

Mr B Wilson:

We need a total change in culture.

Mr Weir:

We do.

Mr B Wilson:

As you say, once a planning application goes on to a schedule, the applicants and the opposition phone councillors. Months before the thing begins, we get more and more phone calls. That will have to stop.

Mr Weir:

Councillors will have to say that they cannot take the calls, or whatever.

Mr B Wilson:

The constituents are used to that culture —

Mr Weir:

I appreciate that there is a massive change in culture, but that is basically what happens in Scotland and England. If a councillor is found to be having meetings or getting lobbied on an issue of that nature, they are disqualified from that decision because it is a potential breach.

Mr B Wilson:

Is there anything about that in the legislation?

Dr Ellis:

That will come through local government. It is for the councils themselves to decide how to handle that.

The Chairperson:

It is all about a code of conduct and everything else. Key to all of that is the training and the resources that go to that. I take your point on board, Mr Wilson. Obviously, people will be concerned about that. If councillors were not MLAs and there were no dual mandates, that would

be a starting point.

I want to seek some clarification about the call-in process, which you mentioned, Geraint, and what happens in other jurisdictions. Will you also expand a wee bit more on the completion notices and the timing of those?

Dr Ellis:

I did not write the call-in bit of the paper; I am just presenting it. The easiest way to understand the call-in procedure is that, at the minute, the Department has what are called section 31 determinations. Think of the divisional offices as the local planning authority. If there is an application of major regional significance the Department will call it in. It will work on that basis. The difference now is that it goes to a different organisation with different political control. Are you looking for the criteria?

The Chairperson:

In principle, that is fine. It is back to the independence issue and who makes the decisions and what the contributions are. It was only for clarification.

Dr Ellis:

The idea is that if there is a major landfill or wind farm scheme or something, the local council might look at local interests, which might not be in the national interest. It is usually aimed at major infrastructure issues so that the Department will take into account the national interest.

The Chairperson:

That is fine. What are your views on the timing of completion notices?

Dr Ellis:

There are pros and cons, and the Department has come down one way. In the consultation, 69% were in support. The benefit is that a notice of completion will alert a local enforcement officer to check that the conditions have been satisfied and so on. At the minute, the planners do not know when it is finished. In a sense, there is no rigorous way of checking whether it has been built in accordance with planning permission. There may be other benefits as well, because it will certainly alert building regulations. Even any enhancement of business rates will then come from the completion notice. As a mechanism, it will specify that.

On the downside, it is another layer of bureaucracy. Reading between the lines, that is why the Department did not go for it. At the moment, they are not convinced that that bureaucratic element is outweighed by the benefits. However, it does point to a system working in Scotland, so that might be worth further examination. I do not know how it works in Scotland.

The Chairperson:

Maybe we will find that out. We have to get the balance of power right. We will hand these powers down to local councils, and I have often said: "Be careful what you wish for". It is a big undertaking and we need to get it right from the start. How does it work in other jurisdictions? I know that in the South it is local councils, but consideration may be given to its going back centrally. Are there examples of how that balance has been got right or how it works?

Dr Ellis:

It is normal in a European or worldwide context for local councils to have planning controls. In a sense, we are looking to move to a situation where people expect local democratic control. The difference here is that because there has been no tradition of that in the last few decades, there are questions over the capacity to do it. A colleague of mine will talk to the Committee specifically about capacity. My expectation is that it will work well when it is bedded down. There are clear lines of accountability and responsibility.

In the Irish Republic there is a different element in that planning officers have greater executive powers. The role of local councillors in the Republic is primarily to set the policy, which the officers then implement. That is one way to overcome questions about whether councillors have the capacity, and it is an element that the Committee might want to introduce.

The Chairperson:

Obviously, Suzie, we have more research to go on a few elements. This is an important piece of work, so we appreciate that. Before we move to the next briefing, are members content for the research papers to be sent to the Department for comment?

Members indicated assent.

The Chairperson:

Are members also content for the papers to be posted on the Assembly website?

Members indicated assent.

The Chairperson:

OK, thank you. We now move on to a departmental briefing on the Planning Bill. Members have papers on planning functions and local development plans and a departmental reply on the timetable for subordinate legislation that will follow the Bill's implementation. I welcome Maggie Smith, Lois Jackson, Irene Kennedy and Peter Mullaney. OK, Maggie, welcome back.

Ms Maggie Smith (Department of the Environment):

Thank you very much.

The Chairperson:

No doubt you were listening in with great interest.

Ms Smith:

We were.

The Chairperson:

Obviously, the research papers will go to you.

Ms Smith:

Thank you very much, Chairperson. We have two papers, the first on development management and the second on enforcement, so we have thorough coverage of those aspects of the Bill. We will probably change cast between the two papers. Lois will deliver the development management paper. Would you prefer that we stop for discussion after that paper?

The Chairperson:

We will do one paper at a time.

Mr McGlone:

Do we not have copies of those papers?

The Chairperson:

They are only speaking notes, and are in members' packs.

Ms Lois Jackson (Department of the Environment):

I will run through Part 3 of the Bill, which deals with development management. The new development management system represents, along with the new development plan system, one of the two central features of the reformed planning system. It will bring about a modernised planning application system that will be fairer, more predictable and efficient.

I will set out the main changes that we are bringing forward through the Bill under development management. The focus of development management is to deliver sustainable outcomes by encouraging earlier engagement on development proposals, promoting greater transparency and dealing with applications in a more proportionate way.

The hierarchy of developments is introduced in clause 25 and includes the categories of "regionally significant", "major" and "local" developments. For the purposes of the Bill, "major development" includes the category of "regionally significant development", which, in effect, forms the top slice of the "major development" category. That is dealt with by the Department under clause 26.

I refer you to the schedule that we forwarded in advance of today's meeting, which identifies nine classes of development under the headings of "regionally significant" and "major" development. Those will be consulted on through subordinate legislation, but they give an initial view of the development categories and thresholds to be applied. "Local development" will comprise all other developments that do not fall into the "regionally significant" or "major" categories.

The categorisation of applications in the development hierarchy is intended to streamline the processing of applications so that greater resources can be targeted at those applications with the greatest economic and social significance. Decision-making processes will be tailored according to the scale and complexity of the proposed development in order to deliver decisions in a more predictable time frame. Councils will determine all major — other than regionally significant — and local developments.

Of note is the power for the Department to direct that a specific application that would normally be "local" be dealt with as if it were a major development. That builds a degree of flexibility into the hierarchy, where, for example, a "local" application that is just under the threshold of classification as a major development would benefit from the statutory pre-application requirements of community consultation. That will be referred to later today.

Regionally significant applications will be submitted directly to the Department. In order to make the process straightforward and easily understood, thresholds will be applied to development types. Those are identified in the schedule to which I referred earlier. If the proposed development exceeds the thresholds, the applicant must enter into consultation with the Department.

The Department will determine whether an application is regionally significant based on the two identified criteria, which are, first, whether the development is of significance to the whole or a substantial part of Northern Ireland, or, secondly, whether it involves a substantial departure from the local development plan. If the proposed development is considered to be regionally significant, then an application must be submitted to the Department. If, however, the Department is of the opinion that the development is not regionally significant, the application is instead to be made to the appropriate council and dealt with as a major development. Following the pre-application stage, regionally significant applications will be processed through either a public inquiry or a notice of opinion.

Clause 26 also introduces a new proposal for considering representations, whereby the Department can appoint persons other than the Planning Appeals Commission for the holding of a public inquiry or hearing. That will provide flexibility for the scheduling of inquiries or hearings, which will help speed up the process and overcome delays.

The nature and scope of a proposed development may raise issues of such importance that it is reasonable for the Department to call in a planning application for any such development from the district council — in effect, to take over the role of decision-maker. Clause 29 empowers the Department to make directions requiring applications for planning permission to be referred to it instead of being dealt with by the district council. It is important to state that the intention is to intervene or call in an application only under certain circumstances, not to cause unnecessary

delay to councils in issuing decisions.

For that reason we are working on the basis that councils will be required to notify the Department, through a direction, about applications to which a Department or statutory consultee has raised a significant objection, or where the application consists of a significant departure from the local development plan. Again, that will be subject to consultation along with the subordinate legislation.

In addition, clause 56(1)(b) allows the Department to apply conditions to an application which is referred to it, instead of having unnecessarily to call in a planning application, where a condition would satisfy any of the Department's potential concerns. The application will then be returned to the council. This allows an element of flexibility and greater expediency in dealing with notified planning applications.

In exceptional circumstances, the Department may give a direction to call in any planning application other than those notified to it, where an issue is raised that may be considered regionally significant. This acts as an important safeguard and is similar to that provided in the other jurisdictions. When an application is called in, the processing route will follow that of a regionally significant application submitted directly to the Department.

Clause 31 provides for schemes of delegation as a means of improving efficiency in the decision-making process. This will enable certain decisions, within the category of local development, to be made by an appointed officer of the council. Schemes of delegation will provide maximum scope for officials to determine straightforward local applications, thus ensuring that elected members can focus attention on more complex or controversial applications.

The Chairperson:

Excuse me, Lois. For reference, gentlemen, obviously this paper is in the packs, but if you refer to the Planning Bill, the clauses and the explanatory memorandum are in it as well if you would like to refer to it as well. Thank you.

Ms Jackson:

A safeguard is provided to allow the council to determine an application by itself which would otherwise fall to be determined by an appointed officer. That will provide some flexibility on a

case-by-case basis. Where a decision is taken to refer an application to elected members in this way, the Bill requires a statement of reasons to be provided to the applicant.

New powers are introduced under clause 56 relating to statutory consultees and consultation on a planning application. The Department has acknowledged concerns that the current consultation process contributes to delays in the determination of planning applications. To create greater clarity and certainty, clause 56(1)(c) and (d) requires both councils and the Department to consult with the relevant bodies known as "statutory consultees" with regard to planning applications. The proposed list of statutory consultees, and the circumstances in which they will be consulted, will be set out in subordinate legislation.

In addition, clause 224 introduces a requirement for statutory consultees to respond to a consultation request within a prescribed period. It is intended to provide a proportionate time frame in subordinate legislation which will link time periods to categories within the development hierarchy. That is an important step in providing greater efficiency and timeliness in the decision-making process. Furthermore, clause 224 gives the Department power to require reports on the performance of consultees in meeting their response deadlines. That responsibility will inevitably highlight which statutory consultees are responding to consultation within the prescribed time frame and which are not.

In addition to speeding up the response of statutory consultees, the Bill introduces a change to the appeal period. The term within which an appeal must be lodged with the Planning Appeals Commission is reduced from six months to four in clause 58(3). That will give a greater element of certainty in timescales. The Bill also enables the Department to amend the appeal period through subordinate legislation if necessary.

That completes our presentation, aimed at familiarising members with some of the key aspects of development management provisions in the Bill. However, I must also say that fundamentally important to development management are the key provisions under community consultation which will be outlined to you later today. I welcome any questions.

The Chairperson:

Gentlemen, do you want clarification on which are clauses it is before we ask any questions, or are you happy enough with the notes you have? Lois, you can provide clarification by reading

out the clauses that you referred to. Can you do that quickly, please?

Ms Jackson:

Certainly.

The Chairperson:

Members can be following their files on the Bill.

Ms Jackson:

It is clause 25, in relation to the hierarchy; clause 26, in relation to the Department —

The Chairperson:

Just read them all down: 25, 26, 29 and so on.

Ms Jackson:

Clause 56 is also referred to there; clauses 31, 58, 59 and 224.

The Chairperson:

Thank you very much for your presentation. To be fair, we have many documents and papers, so just bear with us. There was talk of an Order in 2006 and of a plan-led system. When can we expect to see the Planning Bill up and running?

Ms Smith:

The provisions will not be commenced until after the local government reorganisation Bill is made in the next Assembly. This Bill sets out the new planning system and prepares everything for the transfer of powers to councils. However, it will be the local government legislation that allows the powers to transfer. Importantly, that Bill will have the new governance and ethical standards arrangements, including the code of conduct for councillors. That is all being consulted on at the moment.

The Chairperson:

So it is based on the governance as opposed to the number of councils.

Ms Smith:

Yes, the governance has to be there first.

The Chairperson:

Obviously, the reorganisation Bill will now be in the new mandate.

Ms Smith:

Yes, early in the next Assembly. The policy is out for consultation, with the expectation that the Bill will be in the next Assembly.

The Chairperson:

We have heard a lot about the PAC and its independence. I do not think that too many decisions will be overturned with a recommendation coming from an independent report from the PAC. There were questions this morning, and questions from the respondents, about the true independence of that. If we set up an independent group to assess an application, albeit on the criteria that are laid down at the minute, how can we assess whether the procedures are properly followed? If the Department decides to overturn that, can it be truly independent? What in the Bill will ensure that it is truly independent?

Ms Smith:

The Bill provides for the continuation of the PAC and its functions. What is important is that the PAC is a legal entity that is completely separate from the Department of the Environment (DOE) and all the councils. It has its own functions to carry out in a particular way under the legislation and cannot be influenced directly by the Department or the councils.

The Chairperson:

It could be questioned whether it is truly independent, given the record of one public hearing per year. We need to address that through the Bill and ensure that we have total independence.

The Bill refers to working across councils. How will that be conducted with regard to hearings? You have given councils scope to work together. If one council decided to pull out of a piece of work, what is in the Bill to ensure that that piece of work will not be lost?

Ms Smith:

Is that in relation to the development plans, if two or more councils decide to work together to produce a joint development plan?

The Chairperson:

Yes.

Ms I Kennedy (Department of the Environment):

There are provisions to carry forward any work that has been carried out jointly. The Bill protects and retains work that has already been carried out.

Ms Smith:

The general oversight powers that we talked about with regard to safeguarding will allow the Department to intervene at that stage and make sure that that work was carried forward.

The Chairperson:

Right. We talked earlier about the award of costs. Why has that not been introduced? Where are we with that? There was an indication that they would be included in the Bill, and now it has been decided not to include them.

Ms Smith:

The intention is to include the award of costs. We will propose an amendment to put that in.

The Chairperson:

OK. Do you want to talk a wee bit about completion notices? We have only received the responses, and some of the issues are starting to raise their heads. I am trying to tease out as much as possible now. We want you to have all of the research papers so that we can comment and it will not be a case of going back over the same things. Have you had any sight of the papers yet? Issues would surely have been raised in respect of all of these matters through the original consultation. Has the Department, in its wisdom, decided to reconsider some of the suggestions or considerations?

Ms Smith:

We have seen some of the papers that have been sent in, and we look forward to seeing the

research papers that were discussed this morning. Would you like us to talk about completion orders?

The Chairperson:

Yes.

Ms I Kennedy:

In the consultation paper, we discussed notices of initiation and completion of development. There are other provisions in the Bill that deal with completion orders, which are a different mechanism to deal with a situation in which development has been commenced but not completed.

Notices of initiation of completion and development are a tool that is in place in Scotland. They require developers to inform the planning authority when they commence development, at stages during the work and when the development is complete. That is a relatively new provision in Scotland. We sought views, and, as Geraint mentioned, those were mixed. Those in favour thought that it would be a useful monitoring mechanism to see how a development is progressing. Those against thought that it added bureaucracy to the process, because a developer has to inform the planning authority when development commences and at agreed stages.

An interesting point that was raised by a number of respondents was the links with the building control system. Both of those functions will be with councils. There may well be opportunities to link the planning regime and the building control regime. We concluded that it would be useful to monitor what has been happening in Scotland, but at this time we do not propose to bring forward those notices.

The Chairperson:

OK. You will have to forgive us for trying not to stray back and forward because there is that much to the issue. Some parts are linked to others.

Ms Smith:

We understand.

The Chairperson:

The Minister is not bound by the decision. As I said about the PAC, it comes as a recommendation. He can make his own decision. Ultimately, somebody has to make the decision, but we need to ensure that the process is being followed, that it is not just a talking shop and that people are allowed to submit whatever it is in terms of a hearing. It is something that we need to look at. The issues are only coming out through the responses that we have been getting. I want more clarification. I have a note about major development and the hierarchy, but obviously the respondents did not have the opportunity to see that. We have had the opportunity to break that down. Is that correct?

Ms Jackson:

We consulted on the categories in the formal consultation paper, but the subordinate legislation will firm up our proposals. We took on board all of the comments that we received during the consultation to get to this stage.

The Chairperson:

OK. We are running short of members.

Mr McGlone:

Maybe you will forgive me; I will start at the beginning of the Bill and work my way through rather than ping-ponging back and forward. Clause 1 refers to:

"general conformity with the regional development strategy".

Where is that at the moment? I know that it was, how shall I put it, a bit loose. That is the first thing. Bear with me, Chairperson.

The Chairperson:

On behalf of Mr McGlone, we are getting that sort of problem back and forward. We will bear with it and see.

Mr McGlone:

I am just starting at the beginning and working my way through.

Ms Smith:

May I make a substitution? Would you mind awfully if Angus came forward?

The Chairperson:

Yes, certainly.

Mr McGlone:

You are off the bench, Angus.

Ms Smith:

Angus is the expert on development plans, so he is the best person to deal with your questions on the early part of the Bill.

The Chairperson:

I am mindful, gentlemen, that we went through this last week, but we will quickly go back through it again.

Mr McGlone:

There are major issues at stake here.

The Chairperson:

I totally agree.

Mr McGlone:

The English of one bit absolutely intrigued me. Maybe, Angus, this is the difficult one, and this could be a penalty kick and you are not the goalie. Clause 2, "Preparation of statement of community involvement by Department" — sorry, it is not that one.

The Chairperson:

Bear in mind that we are doing community involvement in the afternoon session. I understand, Mr McGlone, and I will certainly allow some scope with questions. However, if there is stuff that we are doing later on, we will certainly bring that up, but we just have to listen to what the question is going to be.

Mr McGlone:

That is OK. I will take only a minute to ask it uninterrupted. Clause 6(3) states:

"If to any extent a policy contained in a local development plan conflicts with another policy in the local development plan the conflict must be resolved in favour of the policy which is contained in the last development plan document to be adopted or, as the case may be, approved."

I seriously do not know how you could ever contextualise or explain that, Angus. Maybe it is for another day, but as I was reading this last night I was saying to myself, "What in God's name is that talking about?" Presumably, when a development plan has been approved and gone through the consultation exercise, everything else is going to be compatible within it. Anyway, I will just park that one.

How are local policies plans going to be compatible with regional policies? Just for clarity, presumably clauses 15 and 16 apply solely in circumstances when the Department does not agree with, or finds issue with, development plan proposals. It is just to get that clear in my own mind.

There are issues around joint plans, just to get a wee bit of a handle on what those joint plans might do. That is clause 17. Clause 17(5)(a) , (5)(b) and (6) also require a wee bit of explanation for me. Forgive me if I am a wee bit thick on stuff such as this, but these are just issues that popped up at me last night when I was reading through this.

Clause 27 is community consultation. I will leave this one until later, but maybe you could make a wee not of it. Clause 27(6) states:

"The council may, provided that it does so within the period of 21 days after receiving the proposal of application notice, notify the prospective applicant that it requires (either or both)".

"It" being the notification, I presume. I do not know.

Can we move on then, please, to the issue of safeguards that was referred to earlier, and we are moving into the pre-application community consultation and all that sort of stuff. It is extremely important that the Committee sees any equality assessment or human rights assessment that has been carried out. I am not talking about a tick-box exercise, but the full detail of all of this, because that has major implications. We touched on some of them this morning, namely, the role of councillors, the issues that that could take us into, and the safeguards that are required. I accept the issues that officials are here for today, but the whole reform of local government has to be inextricably tied in with this. In many ways, we are getting the cart before the horse. The reform should have been carried out with adequate safeguards before we even move on to the functions that are before us today. Perhaps members will agree that we should get access to the equality impact assessments that were, presumably, carried out. Is that OK, Chairperson?

The Chairperson:

Yes.

Mr McGlone:

Can I get some explanation of local development "schemes of delegation"? What is that? Are we dealing with simplified planning zones today? I am just working my way through the Bill as it meets me.

Ms I Kennedy:

We propose to talk about those briefly on Thursday.

Mr McGlone:

I will leave that stuff until then. There is some unusual stuff there.

On clause 38, I am thinking of national parks, for example. I am sure that Mr Clarke will be talking to me today and is well aware of the issues around that. I am thinking of a national park where, conceivably, certain development or land types cannot be zoned, for instance, in a village or in what could be interpreted as a village, and how the development plan would correlate to that where, for example, there is the designation of a national park.

Clause 38(2) states:

"Where land included in a simplified planning zone becomes land of such a description, subsection (1) does not have effect to exclude it from the zone."

What if it expires after 10 years? There is a 10-year thing around that. In other words, if that simplified planning zone falls, are we back to square one where it may not, in fact, be renewed?

Are we dealing with clause 39?

The Chairperson:

We have tied the Bill into parts, and Mr McGlone is asking about specific clauses. Whatever you were prepared to talk about today, will you indicate whether you can answer today or the next day?

Mr McGlone:

I am happy enough to wait for the answers.

The Chairperson:

As long as you indicate.

Ms Smith:

Our quick conference was to confirm that it would be better to talk about simplified planning zones on Thursday. We can give more time to it then.

Mr McGlone:

Does that also include the enterprise zone stuff?

Ms Smith:

Yes. We can shape our presentation —

The Chairperson:

Queen's has done the research in blocks for us. We are trying to stick to that, but there are valid questions to be asked. Please indicate when we are dealing with them.

Mr McGlone:

Are we dealing today with the form and content of planning applications?

Ms I Kennedy:

No. We propose to go through the remaining provisions of the Bill on Thursday. We are concentrating today on the new provisions in relation to certain topics.

The Chairperson:

The topics are development management, planning control, enforcement and community involvement.

Mr McGlone:

Are we dealing with clause 44?

Ms I Kennedy:

No.

Mr McGlone:

Right. It is just that starting at the beginning of the Bill and going through it is a wee bit —

The Chairperson:

That is why I asked you to highlight the clauses that we were dealing with.

Mr McGlone:

Clause 47, Irene? No?

Ms I Kennedy:

No.

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The Chairperson:

Will you clarify again the clauses that you are dealing with?

Mr McGlone:

What about clause 54?

The Chairperson:

Just read them out, please.

Ms Jackson:

The clauses that I am looking at under development management —

The Chairperson:

The topics are planning control, enforcement and community involvement. Can you please read out all of the clauses that we are dealing with today for the benefit of the members?

Ms I Kennedy:

Lois, perhaps you want to read the development management clauses that we are looking at today.

Ms Jackson:

Clauses 25 to 28 will be dealt with later today. Clauses 29 to 31 — basically everything under development management.

Mr McGlone:

So, probably not everything.

The Chairperson:

We are also looking at clauses 58 and 59. Have you got all of those clauses, Mr McGlone?

Mr McGlone:

We will leave those until later on.

The Chairperson:

Now the valid clauses that Mr McGlone asked about.

Mr McGlone:

Sorry about that. I was just dealing with reading the document, rather than jumping about the place.

Mr Kerr:

Do you want me to come back on some of the points on the earlier one?

The Chairperson:

Yes, on some of the clauses that we have been dealing with today, and we will deal with simplified planning zones on Thursday. Deal with the clauses on which Mr McGlone specifically raised questions.

Ms Smith:

Are you content if Angus deals with the issues that concern the development plan and then we move on and deal with development management?

The Chairperson:

Yes.

Mr Kerr:

The first issue that Mr McGlone raised was the situation with the regional development strategy. There will be an ongoing requirement for the Department to ensure that its plans, policies and guidance are in general conformity with the regional development strategy. That means planning policy statements (PPSs) that are prepared by the Department once the functions transfer. The requirement on the councils will be that they must take account of the regional development strategy when they prepare their new local development plans. That is a slight change from the current position, where the Department prepares local development plans and has to be in general conformity with the regional development strategy.

There are a number of reasons for that change. First, as some members will be aware, there were difficulties with the conformity issue in development plan inquiries in the past. There was a judicial review of the Ards and Down plan over the issue, and there is a lot of concern about the definition of that and how it works in practice through inquiries. The two Departments wanted to look at that in any case.

Secondly, there was a desire to have a relatively simple system for councils in the future so that, if they were preparing a plan, they would not have to have recourse to different Departments, going to Regional Development about the regional development strategy and maybe being told something different by Environment. Therefore, the idea was to come up with a simple, standard approach that will take account of where it came into effect. When councils are doing their plans, they will have to take account of the regional development strategy, PPSs and other central government plans, policies and guidance. In that sense, the move was twofold.

Mr McGlone:

Will they still have to comply with it?

Mr Kerr:

They will have to take it into account, yes. The two Departments have agreed that some guidance will be set out for councils showing clearly what they must do to show that they have taken it into account.

Mr McGlone:

When is that guidance likely to be available, Angus?

Mr Kerr:

The plan is to have that available for the transfer of functions. We are currently working on that in the background.

Mr McGlone:

When did that work start?

Mr Kerr:

It started with the preparation of the Planning Bill and the negotiations between the two Departments on how we would handle the regional development strategy in the future.

The second issue that you raised was the rather complicated wording in clause 6(3). We are now splitting the development plan into two bits, the plan strategy and the local policies plan. The idea behind clause 6(3) is to look forward to a council having both of those documents in place and looking to prepare a new one in, for instance, 15 years' time. That would mean that there was the existing plan strategy and local policies plan and a new plan strategy, prepared by the council. That subsection clarifies that the new plan strategy overrides the old one to the extent that it covers the issues in the old one. However, the old local policies plan still applies.

Mr McGlone:

To be honest with you, Angus, the Bill is not very clear on that. I could read that a couple or three ways and still make no sense of it.

Mr Kerr:

Yes, it is a complicated system to try to deal with the fact that we have the two-stage plan.

Mr McGlone:

I understand the system. It is just that that wording does not make it at all clear.

Mr Kerr:

If a policy in a local development plan conflicts to any extent with another policy in a local development plan, the conflict must be resolved in favour of the policy that is in the last development plan document. That is to clarify that the most recently prepared development plan document is the one that —

Mr McGlone:

That should have already been in that.

Mr Kerr:

In what way?

Mr McGlone:

If that was not part of the strategy, should it not have already been in there? Should it not have been incorporated into that local development plan?

Mr Kerr:

You will have a local development plan with a plan strategy and local policies plan in place. The issue is just when you are coming to bring forward a new one. There could be the potential for an existing plan strategy that has been through all the processes and been adopted, and the council is then working on a subsequent plan, their next one, for the following 15 years. That is to clarify that that plan would have a determinative weight.

Ms Smith:

We need to tease that out in the guidance to make it clear to people.

Mr McGlone:

It is not clear at all, to be honest.

Mr Kerr:

It is quite convoluted wording.

The Chairperson:

I remember asking at the last presentation about existing plans and how those will impact on new

councils, whether in this format or the 11-council model. A body of work is already done on that. We just need to be clear about the challenges. Obviously, things have changed over time. We said that the review process is for five years. Is it?

Mr Kerr:

That is correct.

The Chairperson:

That needs to be clear, and clear guidance needs to be given to councils on that.

Mr Kerr:

The next point was about clause 9 and the issues that the local policies plan has to be compatible with. The first key thing is that they have to be consistent with the plan strategy that has been prepared. They also need to take into account the regional development strategy, and policy or advice in guidance issued by the Department, and any other matters that the Department prescribes. Does that clarify the point?

Mr McGlone:

How is that different from what exists in policy at the moment? Take the concept of a local policy plan: how is that so different from what already exists under the hierarchy of different types of developments and provisions that can be made under existing policies?

Mr Kerr:

Do you mean comparing it with development plans that we do today in the Department?

Mr McGlone:

If you like, the hierarchies or different concepts of development that are already in those development plans. What is new about that local policy plan other than just a term? You are the professional.

Mr Kerr:

It is not a massively new concept. At the moment, our development plans have elements of the plan strategy. There are then local policies plans — the zonings and detailed design criteria that we have in existing plans. The legislation formally separates those out to enable the development

plan process to be faster. The idea was not to wait for the whole thing, which takes a long time to process, and then taking the whole thing through independent examination. There are clearly two elements to the plans that we do anyway, the more strategic stuff and the local stuff. Why not just separate those out, take the first strategic stuff through quickly and get agreement on that, and let that inform the local policies plan, which will then follow up with all the details?

Mr McGlone:

Does that mean that you do not have a conflict?

Mr Kerr:

That is why it has to be consistent with that.

Mr McGlone:

Back to the original point.

Mr Kerr:

Your next point related to clause 15. Intervention is an opportunity and a safeguard for the Department to be able to intervene and issue a direction if something in a plan needs to be changed. There are also default powers in the following clause whereby the Department can come in and take over plan preparation.

You wanted to know how the joint plans will work. Essentially, clause 17 gives councils the opportunity to work together in the preparation of a plan, if they so wish. Councils can work together either at plan strategy level or on both the plan strategy and the local policies plan. Clause 18 gives the Department the power to require councils to work jointly. As Maggie said earlier, there are also detailed provisions to deal with situations in which councils have problems working together. If, for example, one council decides that it does not want to do it anymore, there needs to be a way to take forward work that has already been done.

Mr McGlone:

I am intrigued by that. Say that you had two councils with two different area plans or local development plans at different stages of advancement. Are the joint plans to introduce concepts of where there is coterminosity, say to introduce a development? Conceivably, you could have one part of a village in one district council area and the other part in another. How would you

ensure compatibility with your local plans if one area plan or development plan is at a different advancement to another?

Mr Kerr:

The idea is that it will be agreed by the two councils and that they will get together and prepare a plan that covers a town that is separated in some way by the boundary. That will be the planning framework or the local development plan for that area. The previous plans prepared by the Department — or, in the future, by different councils — will cease to apply once the new joint plan comes into effect. The old ones will apply until the new plan comes into effect, so there should never be any confusion or a time when there is no coverage. As with all these provisions, regardless of the situation with existing DOE plans, councils will have the opportunity to go ahead and prepare a local development plan as soon as the powers are transferred. That local development plan, whether prepared by one council or a joint plan, will override the DOE plan as soon as it is adopted.

Ms Jackson:

You mentioned the bits that I am dealing with and asked for clarification of clause 27(6). Angus is going to talk about community involvement, but, since you mentioned it:

"The council may, provided that it does so within the period of 21 days".

"It" refers to the council or planning authority's request of the applicant.

You wanted more information about the schemes of delegation under clause 31. Essentially, each council will have to draw up a scheme of delegation saying what types of local application can fall under it. It will only apply to the "local development" category. That applies to all applications that sit outside major or regionally significant applications. Therefore, the majority of planning applications will fall under local developments.

A council can indicate what types of local development it intends to include in the scheme. This will be set out in subordinate legislation, as the purpose of subordinate legislation is to clarify this level of detail. There are couple of things that we will insist that councils not include in a scheme of delegation: applications made by a district council itself or an elected member of the district council, or that relate to land owned by the district council or in which the district council has an interest. That acts as a safeguard.

So, it really applies to any type of local development application when an appointed officer, who in the majority of instances is likely to be a principal planning officer, can sign off a straightforward, uncontentious planning application without having to go to a committee or full council. That is the purpose behind that. It is a follow on from our current streamlining.

The Chairperson:

Did we ask about clause 31?

Mr McGlone:

Are we coming back to that one?

The Chairperson:

Councils and respondents are asking about subordinate legislation and guidelines now. I know that you cannot predict exactly what will be there, but you have a fair idea of what you need to do to incorporate whatever it is and to transpose that.

Ms Jackson:

Yes, the details.

The Chairperson:

So, the sooner we get the guidelines, the sooner we get the subordinate legislation. Then they would then have been able to respond and say how you would deal with local plans, development and everything else. It is not just about land use but about place. That is what you were saying about the joint plans. That is a key element of it all. Is that you finished, Mr McGlone?

Mr McGlone:

Will we be coming back to the issues around clauses 36 and 38?

Ms Jackson:

Yes, absolutely.

Ms Smith:

On Thursday.

Mr McGlone:

Thank you, Chairperson.

The Chairperson:

No problem. That is fine, Mr McGlone, you are welcome.

Mr Dallat:

Chairperson, I am sure that you will be pleased to know that at this stage I am suitably confused, and God knows what the public will feel like when this finally gets their length. Is there any organised method to what we are doing here?

The Chairperson:

OK, just to clarify: we asked the research team to break the Bill down into clauses that are related, and that is what they did. We went through parts 1 and 2 last week. I afforded Mr McGlone an opportunity to ask questions on parts 1 and 2 that we should have asked last week. However, it is a big Bill, and we need to look at it. It is as simple as that. I have no problem going back over it.

There are inter-related issues, but it is not as simple as us lifting a 240-clause Bill and going through it clause by clause, because they are related. We asked the university team to break it down into planning control and enforcement, parts 1, 2, 3 and 4. We then asked for people to come along and speak on those points. I am trying to stick to questioning them on those points. If members are unsure, however, or want to ask about a certain clause, I will allow them to indicate whether we are discussing that clause today or on Thursday.

Bear in mind that we went through the first 20-odd clauses last week, plus a few others. Unfortunately, Mr Dallat had to go to another meeting last Thursday afternoon, and I will afford some scope for that. However, I would like those responding to say "We will deal with that", and if there is anything else that we need to tie up today, we will do so.

We are now going through part 3, having done parts 1 and 2. However, members are certainly entitled to ask whatever questions they want, and we will try to provide clarification.

Mr Dallat:

I just got a note to meet the Croatian ambassador. I am sure that that will be a lot simpler than being here. I really do not understand what is going on. Maybe privately I will get some tuition. I really do not know. I despair for the public, who will eventually get this as a product in improved planning. Where has the campaign for plain English gone? This might as well be an excerpt from Chaucer. That is terribly negative, but I was going to ask simple questions such as how to define "major" and "local" issues.

The Chairperson:

Yes, that is on today. That is correct.

Mr Dallat:

The question really is: how can you define something that is major and something that is local? For example, I would see a new factory employing 1,000 people — if only — as major, and not a problem. However, what about a landfill site planted in the middle of an area of outstanding natural beauty? Would that be treated as local?

Ms Jackson:

I am not sure whether you have seen the schedule, which sets out what we have classified as major development applications.

Mr Dallat:

No.

Ms Jackson:

We circulated that to you last week. I understand your point about the clarity of description.

Mr Dallat:

I need a copy of that badly.

Ms Jackson:

Yes. That will —

Mr Dallat:

Now, just one other wee question, Angus —

The Chairperson:

Excuse me, but there is a definition of what is "major" in members' information packs.

Mr Dallat:

Exactly; that is why I am asking the question.

Ms Jackson:

There are nine categories of application in the schedule. Number 9 is "all other development". Essentially, that is a catch-all for different types of development that are not in the other categories.

Mr Dallat:

All right, thanks. When will we have an opportunity to discuss the relationship between, for example, the Planning Service and the Roads Service? Does that fit into this paper somewhere? You will be aware that there are major problems and all sorts of little power games played between the Planning Service and Roads Service. The Planning Service gives an indication to approve something; Roads Service takes the hump or whatever you call it these days. I am sure you must know that there are suggestions that that element of Roads Service should be integrated into the Department of the Environment. Those are the sort of things that I came here to discuss.

The Chairperson:

That is fine. To my thinking, the list of consultees has not changed during the whole process, and you are entitled to ask questions. There have been problems, and those clearly need to be ironed out.

Ms I Kennedy:

We have already mentioned the provision in the Bill that deals with consultation arrangements — the duty to respond to consultation.

Mr Dallat:

I fully appreciate the work that has been done; do not get the impression that I am trying to

rubbish it or dismiss it in any way. I just feel that I am surrounded by a forest of paper. I really want to make a positive contribution but at the moment I am inundated.

The Chairperson:

I totally agree. I propose to sit down after and talk to the staff and see. We broke the Bill down as best we can. It is a big Bill, and we have limited time. There are certain questions for today's session. If there is any other information, Mr Dallat, you will certainly be given it.

Mr Dallat:

OK.

Mr W Clarke:

Sorry for being late. I was in the Chamber for the debate on the Dogs (Amendment) Bill. I want to ask about major developments, and you probably touched on that when I was out. What involvement do the local plans have with major development, especially the council and community aspect of that? Can you give me a bit of a flavour about how that rolls out? What is the process for major developments? Can you go to an inquiry straight away? Have you that option, or does only the Crown have that option?

Ms Jackson:

The major development category is essentially applications that will be dealt with by the new councils. Those are the significant applications that councils will be dealing with. One reason for having the hierarchy to identify those different tiers is for the purpose of community consultation. That is as important as anything else in defining a major development.

If your planning application is above the level indicated under "major", you will be required to consult the community. That then sets a trail of pre-application requirements that will be statutory, for example, submitting notice to the planning application, having a public meeting and so on. The logic and reasoning behind the hierarchy is so that there will be no query in a proposed applicant's mind, or, indeed, in the mind of the public, who will know when they see something advertised that is over one of those thresholds. The proposals have been pitched at that level so that they will require consultation.

Mr W Clarke:

I appreciate that. As the Chairperson said, it is a vast amount of stuff to try to take in along with the rest of the business. It is very difficult to get our heads around it. We only got these packs yesterday, so the opportunity to take in what people said during the consultation has been very limited.

A big issue with most developments is that they are very slow. I think that we are all trying to improve them. I agree entirely that community involvement will hopefully speed up all of that. Can you explain "major" and "regional"? It is all here somewhere.

Ms Jackson:

We have used the same categories for the regionally significant applications, but the thresholds are higher. In other words, if a housing proposal contains anything over 500 units, the developer should consult the Department initially. The Department is the first port of call. It has the discretionary judgement as to whether to treat that application as regionally significant, if it raises implications for the region as whole or is a substantial departure from one of the development plans. The Department will then take over the role of decision-maker from day one, including the pre-application stage and the application stage.

If the Department serves notice that the proposal has been assessed and is over the threshold that is identified but is not considered to be of significance to the region or a substantial part of it, the proposal will be referred to the local council to deal with as a major development. The planning authority essentially consists of the Department and the local council, so it is important for the applicant to know who to go to in certain circumstances.

Mr W Clarke:

Were third party appeals discussed?

The Chairperson:

That is coming later.

Mr W Clarke:

What about enforcement?

Ms I Kennedy:

That will be discussed shortly.

Mr W Clarke:

What about sustainable development?

The Chairperson:

That was last week.

Mr W Clarke:

I think that that went over the top of us all. We need another session to look more closely at that. A number of people, during the consultation, said that the green infrastructure and climate change elements are very weak. Energy planning and well-being should be at the heart of planning. I had to leave early last week.

The Chairperson:

That is fine.

Mr W Clarke:

Those issues should drive plans, instead of the other way about.

The Chairperson:

I understand. We have clearly outlined a way to go to try to work our way through in a limited time. We will go through informal and then formal clause-by-clause scrutiny. Mr Clarke is right: more issues have been highlighted in the responses that we have received. The Committee needs to look at those issues. They may be included and they may not. Members only got a chance to look at those yesterday. Like I said, we are getting briefings now and we are gaining a better understanding of the Bill. We can ask specific questions once we commence informal clause-by-clause scrutiny, but we will keep at it. I will not stop any member from asking questions at this point. Last week, we ended up with three members to discuss Part 1 and Part 2 at the end of the day, but I am prepared to go on with it.

If members need any other briefing on the matter, we will certainly go down that route. The staff and the research team have put in a lot of work, as has the Department. It is not for me to

tell people what they should do with the papers, but a format is clearly outlined. If members need any more information, we will certainly facilitate that. That is the way I am prepared to go. Sustainability is a big issue. Maggie, you and your team are aware of all that in the responses, so we will look at that.

Mr W Clarke:

Will members, if they wish, be able to get a briefing on the sustainability aspect so that they understand it better? That whole health and well-being drive happened in Wales to tackle obesity. There is also all the green infrastructure stuff, and community and infrastructure levies.

The Chairperson:

We can certainly ask to go over that again. When we get a chance, over the next week, we will notify you, and we will clarify any points if we need to. Are you happy with that?

Ms Smith:

Yes, absolutely. Some of the issues — community levies — are getting outside the scope of the Bill, but we are happy to talk about that at another time. However, would you like Angus to say a few words about the sustainability aspects of the Bill, just to recap?

The Chairperson:

I am mindful that a couple of members want to speak, and we also have to hear the briefing about enforcement. However, if you are brief, please do.

Mr Kerr:

I will be brief. The duty to take sustainable development into account applies both to the Department and to local councils in the preparation of their local development plans. There is also the wider duty in the recent legislation that the Office of the First Minister and deputy First Minister brought through on all public authorities to take sustainable development into account. That sustainable development bedrock is behind the planning system being brought in by the Bill.

There is also a new requirement in the Bill for sustainability appraisals for every local development plan. That requires councils to assess their plans against sustainability criteria to make sure that they have complied with that duty.

Mr W Clarke:

I appreciate that, and we will come back to that issue.

The Chairperson:

We certainly will.

In terms of completion notices, we have to take due account of the economic situation if people are not able to comply or fulfil their commitment in the time frame. Are we considering looking at that?

Ms I Kennedy:

A number of options are open to someone who has a permission that is live. They may wish to commence it or apply to renew it. Is that the context that you are thinking of?

The Chairperson:

I am talking in general, from small applications to large. You used to be able to renew. Perhaps we could look at that and give some weight to the current economic situation. It may not be a case of needing to put that in the Bill, but that is certainly something that we could look at.

Ms Smith:

That is more an application or operational issue rather than something that would go into the Bill. I think I am right in saying that there is flexibility with regard to renewal.

Ms I Kennedy:

Yes, and every applicant can make that case.

The Chairperson:

A wee bit of common sense, in other words. We also need to look at the assessment of the Department's performance. I am not looking at you specifically; I am just saying. In general, there has been a lot of criticism, all because of the delays in the process. There are a lot of reasons for that, and everybody has to take responsibility. However, with regard to the Department itself, will you look at the performance assessment process, or is that in the scope of the Bill?

Ms I Kennedy:

The Bill certainly contains provisions, which we will talk about on Thursday, that deal with the assessment of a council's performance. We have to bear in mind the context. Are you thinking of the Department's performance currently or in relation to its future functions?

The Chairperson:

If that power is going to be devolved, we need councils' performance looked at. However, the Department plays a significant part and also needs to be looked at. I totally agree that there needs to be a mechanism to assess the performance of councils.

Mr Kinahan:

I am sorry that I was not here when you started; forgive me if I raise an issue that has been discussed. My first query is about consulting with the community.

The Chairperson:

We are doing that in the afternoon.

Mr Kinahan:

OK. My second query is about where the legislation states that powers will be delegated to individual planning officers to make decisions on specific types of application. If councillors are unhappy, is there a review system?

Ms Jackson:

Yes, and there is the possibility for councils to deal with an application which would normally sit under a scheme of delegation if it wants to look at it on a collective level. The council has to give reasons why it is doing that.

Mr B Wilson:

I come back to my concern that the Bill reduces the rights of objectors in particular planning applications. There seems to be nothing in the Bill that states that objectors have the right to be represented, or at least very rarely. Have objectors got rights at pre-determination hearings, and how are those rights enforced?

Ms Jackson:

I think that we are looking at that this afternoon.

The Chairperson:

We are dealing with this issue in the afternoon.

Ms Jackson:

That is under the issue of community involvement.

The Chairperson:

Third party right of appeal.

Mr B Wilson:

It is beyond that.

Ms Jackson:

There is an opportunity for objectors at pre-determination hearings.

The Chairperson:

We will deal with that in the afternoon. We come to the issue of enforcement.

Ms Smith:

Irene will introduce the clauses that are of particular interest.

The Chairperson:

Yes, please clearly indicate what clauses it is.

Ms I Kennedy:

We are essentially looking at Part 5 of the Bill, but focusing on the new provisions, so we will be looking at clauses 152-154 and 172. We will also refer back to other provisions that have an impact on enforcement: clauses 104 and 48.

The Chairperson:

OK, gentlemen, do you have all those clauses written down?

Ms I Kennedy:

Members will be aware that enforcement action may be taken where development has been carried out without the requisite grant of planning permission or consent, or where a condition attached to planning permission or consent has not been complied with.

Currently, the Department carries out all enforcement functions under Part 6 of the Planning (Northern Ireland) Order 1991. Part 5 of the Planning Bill transfers to councils the powers to enforce against planning breaches in their areas. Councils will be responsible for enforcement for all breaches of planning control. However, the Department will retain powers to issue an enforcement notice, listed building enforcement notice or stop notice. Those are in clauses 138, 157 and 150. That will take place where, after consultation with the district council, the Department considers it necessary to do so. In addition, the Department will retain powers relating to the issuing of such notices. Those are in clauses 175 and 176.

All enforcement functions delegated to councils will be restricted to their council area. The Department's powers will cover all council areas. The Bill also introduces powers to strengthen enforcement in the planning system. Clauses 152-154 introduce the use of fixed penalty notices as an alternative to lengthy prosecution through the courts where an enforcement notice or a breach of condition notice has not been complied with. They give a person the opportunity to pay a penalty as an alternative to prosecution. The use of fixed penalty notices provides a more cost-effective, less time-consuming and more flexible means of enforcing the legislation. The short, sharp remedy is a proportionate and effective response in line with the Department's better regulation agenda.

The amount of the penalty will be prescribed in regulations and is reduced by 25% if paid within 14 days. The amount of the penalty has not been determined at this stage. Regulations prescribing the amount must be laid in draft before the Assembly and approved by a resolution of the Assembly. The amount should be set high enough to be a deterrent, but there is a balance, as councils can offer discount for early payment. Members may wish to note that in Scotland the penalty is set at £2,000 for fixed penalty notices in relation to failure to comply with the requirements of an enforcement notice and £300 for a breach of condition notice. The new powers will enable councils to use the receipts from fixed penalty notices for the purposes of enforcement functions or other functions specified in regulations.

I will move on to clause 172. Currently, an applicant can apply to the Department for a certificate of lawful use or development to establish whether the existing or proposed use or development of land is lawful for planning purposes. If the Department refuses a certificate or fails to give a decision within two months or an extended period agreed with the applicant, the applicant may submit a planning application in respect of the development or appeal to the Planning Appeals Commission. Unlike other forms of appeal there is currently no time limit for making such appeals. Clause 172 introduces a time limit of four months for lodging a certificate of lawful use or development appeal, or such other period as may be prescribed. That provides a time limit for such appeals in keeping with other time limits.

It may also be helpful to highlight other provisions in the Bill that deal indirectly with enforcement. Changes have been made to the power to decline to determine planning applications that are available to councils and to the Department. Currently, it is possible for the Department to decline to determine subsequent or repeat applications where it is considered that an application is the same as one that has already been processed by the planning system, either by the Department or the Planning Appeals Commission, within the previous two years. Overlapping applications, where an application is determined to be the same as one already in the system, may also be declined.

Those powers are contained in clauses 46 to 49 and are expanded to include the situation in which a deemed application exists on foot of an appeal against an enforcement notice. When such an appeal is made, the appellant is deemed to have made an application for planning permission, which is then determined by the Planning Appeals Commission. Currently, someone appealing against an enforcement notice can make a parallel application for permission for the same development. That is done even though the parallel application is likely to be refused, on the basis that enforcement action is likely to be delayed until the subsequent application has run its course, including an appeal process. The rationale is to attempt to use the parallel application as a stalling tactic to allow a breach of planning control to continue. Allowing a council to decline to determine such applications will close off that potential stalling tactic.

Clause 104 also clarifies the position regarding the demolition of unlisted buildings in conservation areas. It has always been departmental policy that demolition of unlisted buildings in conservation areas without consent should be an offence. A legal ruling removed partial

demolition from within the definition of demolition and reclassified it as structural alteration. Thus, partial demolition of an unlisted building in a conservation area no longer requires conservation area consent. In turn, unauthorised partial demolition is no longer a direct offence. That has been addressed in clause 104(8) by establishing that any reference to demolition in the relevant conservation area clause should also include a reference to any structural alteration where that alteration consists of partial demolition. In practice, that has the effect of creating a new offence of unauthorised partial demolition of an unlisted building in a conservation area.

Finally, as a means of discouraging development from taking place without planning permission, clause 219 provides for the charging of a greater fee or a multiple of the normal fee for retrospective planning applications. The purpose is to deter commencement of development prior to submitting a planning application and to encourage developers to seek relevant permission at the appropriate time. The Department intends that subordinate legislation may prescribe circumstances where a multiple of the normal fee would not apply, for example where works were needed urgently in the interests of safety or health.

That completes our presentation aimed at familiarising members with the key aspects of the enforcement provisions of the Planning Bill. We welcome any questions that members may have.

The Chairperson:

OK, thank you very much. Enforcement, or the lack of it up to now, is a major talking point among councils, and the retrospective planning and everything that goes with it. You mentioned draft affirmative procedure with regard to fixed penalty notices. That has obviously now become a buzzword on this Committee. We need to secure proper enforcement practices. Are powers of entry in the legislation?

Ms I Kennedy:

Yes.

The Chairperson:

Those are obviously delegated to local councils.

Ms I Kennedy:

Yes.

The Chairperson:

So the whole responsibility of enforcement will go to local councils.

Ms I Kennedy:

Yes.

The Chairperson:

I do welcome that, especially the fixed penalty notices. Obviously, there is a right of appeal.

Ms I Kennedy:

Not for a fixed penalty notice, because you will have had the right to appeal the enforcement notice which has been breached by not being complied with.

The Chairperson:

So, you have an opportunity at the first stage.

Ms I Kennedy:

Yes.

The Chairperson:

OK. No problem. Do members have any questions about enforcement? I know that it is a big issue.

Mr McGlone:

My question relates to the link between clause 43 and clause 44. Will you take me through the sequence there, as in the time limit? Is the 28-day sequence right, and how does that tie in with the right of appeal? We are moving to a new planning format, as we all know, which is why we are here, and the role of councils in all that.

Say that you get the 28 days, and we are moving to the certificate of lawful use and development. At that point, you may well make an application, or you have 28 days to verify the bona fides of your certificate of lawful use and development. At what point does the appeal kick in? Does the person still have their four months to lodge an appeal? I am unclear after reading

that last night. Maybe I was reading it too late.

Ms I Kennedy:

There are different tools there. The tools in clause 43 are what we commonly call submission notices. That is where a development has commenced but it is likely that the Department has been alerted to it or decided to investigate for enforcement purposes. The development may be acceptable, and the developer is asked to submit an application to regularise the development.

If you did not think that that development was acceptable, you would go down the enforcement notice route. That would require an applicant or developer to submit an application. If they did not submit it within 28 days, the appeal would kick in at that point. Certificates of lawful use and development are for an applicant or person who wants to define through the Department whether it is lawful for that. I suppose it depends on what tool is used.

Mr McGlone:

That is what I was thinking. It was not entirely clear to me last night what the routes available were, how or if the 28 days would kick in, and what period of time the person would have to appeal a determination, or, in that case, an enforcement notice. Presumably, they would still have the four months.

Ms I Kennedy:

It is more within the submission notice — please bear with me while I look at it.

Mr McGlone:

It is probably just, in my mind anyway, a wee bit confusing about the specification of 28 days.

Mr Peter Mullaney (Department of the Environment):

An enforcement notice takes effect after a specified period. That has to be a minimum of 28 days. If the recipient of that notice does not appeal within that time, whether 28 days or longer depending on the circumstances of the individual case, then that takes effect and the right of appeal is gone. It is then a matter of potentially being taken through the courts. Once an enforcement notice takes effect, you have a period in which to lodge an appeal against it. One of the grounds of appeal is that planning permission ought to be granted.

Mr McGlone:

So, in other words, just for complete clarity on clause 44:

"A person on whom a copy of a notice has been served under section 43 may, at any time before the end of the period allowed for compliance with that notice, appeal to the planning appeals commission against the notice."

Are we talking about 28 days or four months? Is the period of compliance 28 days, or is the person allowed four months to appeal?

Mr Mullaney:

For the enforcement notice, it is a minimum of 28 days. Clauses 43 and 44 do not refer to enforcement notices but to submission notices.

Ms I Kennedy:

Any person:

"on whom a copy of a notice has been served … may, at any time before the end of the period allowed for compliance with that notice, appeal to the planning appeals commission against the notice."

That refers to the 28 days.

Mr McGlone:

So it is 28 days, not four months?

Ms I Kennedy:

Yes.

The Chairperson:

Obviously, the four-year and10-year rules still apply. The enforcement actions will go from buildings which have no planning permission to failure to comply with conditions. Is that correct? It goes right across the scope. In some cases that may not have happened. It is still there; the enforcement act is there. Is that better clarified in the new legislation, or is it just a continuation of what is there already?

Ms I Kennedy:

It carries forward the range of powers and instances that we currently havae.

The Chairperson:

So it goes from lack of compliance or condition to no permission?

Ms I Kennedy:

Yes. That is right.

Mr Kinahan:

I hope that I understand this correctly. One of my great concerns with planning is that the big or the wealthy developer can afford more expensive advice to fight a case. If there is an enforcement case, the council presumably has to be involved before it ends up at the Planning Appeals Commission. I am concerned from two angles. One is whether there will be resources in councils to be able to pay for qualified people to help advise them. The other is that councils will not find it easier just to say yes than to fight, because that will save money. Are we avoiding that in this system? Will we be able to give councils a fairer place in being able to ensure that they move the whole Planning Bill through and work with the Department on enforcement? I do not fully understand the balance of things at the moment.

Mr Mullaney:

It is a matter of resources; obviously, enforcement is demand led. It can be a fairly minimal thing or a large thing. It is worth pointing out that planning policy statement 9 and information leaflet 10 are on enforcement. Also, the Department has published its enforcement strategy. Behind all that lie a number of principles. One of the things about directing resources is to prioritise. Everyone acknowledges that it is a potentially open-ended situation. Those documents set out that the top priority is something irreplaceable, such as the demolition of a listed building, and then it grades them down. That is not to say that each case is not important in its own right. However, given the recognition that potentially resources are limited, those priorities have been established. In any new regime — councils or collectively across the piece — there will have to be some recognition of prioritisation.

Mr Kinahan:

I am not sure. I will come to it again.

The Chairperson:

It will come back. Just on that, it can be an enforcement situation. At the minute, developers can put in developments under a certain threshold and they do not have to provide recreation or open space in certain situations. That has happened. I know that that should be down to the plan itself,

and it may be a matter for the plan and local policies. However, is there going to be some scope, if they do not comply, for an enforcement action there? It has happened before now. Do you understand where I am going? They do it in phases and there is no provision for a play facility or open space or recreation. I am not saying that this is a way around that; the policy is being used, it is being complied with. It is something, perhaps, that we should take into consideration. If that is taking place, it is non-compliance. That is just another example. You may not have had that up to now, but it is a policy that we need to look at and change.

Mr Mullaney:

That stems from the need, at the outset, either in a local plan or in determining a planning application, to ensure that the decision is sufficiently robust to allow action to be taken should the need arise. Currently, PPS 8 sets the parameters for open space, but clearly then, in the provision of local development plans, the councils may wish to consider the potential of local policies. However, in determining planning applications, there is a requirement under PPS 7 to submit concept plans for wider areas. You talked about phasing; that should be the mechanism by which an entire area is considered so that we are not picked off phase by phase. That should allow for the provision of open space. That is the policy context.

The Chairperson:

That is the principle behind it. You used the word "robust", and it has to be.

On another point about the handover to local councils, there is obviously going to be a legacy of decision-making, whether people agree or disagree. We often hear about people challenging the justification of one building over another. Is there going to be a clean slate? We are handing powers over to councils while there are ongoing applications that will be passed during the transition period until the councils take over. Have you considered how that will roll out in the whole process? There will be situations in which local councils will have to look over decisions that have been made previously. There will be new challenges to new applications, and the councils will refer back to the previous decision. That is obviously something that you have considered.

Ms Smith:

Yes. That is not in the Bill, but we will consider it in order to ensure that all the safeguards are in place for the work that is being handed over.

The Chairperson:

It is just something that we need to be aware of. It is a big enough responsibility.

Mr W Clarke:

I have a question about the conservation aspect and the changes relating to partial demolition. I take it that that applies to townscape character areas as well.

Ms I Kennedy:

Yes. Parallel powers will apply.

Mr W Clarke:

Let us imagine a scenario in which an unlisted building is damaged in a fire, and there are health and safety issues with the facade of the building because it may fall onto a road. Consequently, there is an urgent need to remove the facade to improve the safety of the site. I am thinking of a row of houses. This is not a listed building that we are talking about here. What is the process for doing that, now and under the new Bill?

Ms I Kennedy:

An application would have to be submitted to reinstate.

Mr W Clarke:

To reinstate the facade?

Ms I Kennedy:

And to carry out any other works that may be necessary to bring the property back to where it was.

Mr W Clarke:

I am saying that it could fall onto the road and kill people. What is the time frame for the turnaround?

Ms I Kennedy:

The property owner would have to look at all the other obligations that he may have under other

legislation relating to the safety of the property. It is unlikely that we would place a requirement on the property owner to put in an application within a certain period. We would have to sit down and take a pragmatic approach to each case.

Mr W Clarke:

That is what I am trying to get at. I am wondering about the guidance as regards this. I am not saying that a developer would use this as an excuse to knock down the building. Obviously, the facade would have to be replaced, but if there is an urgent need to do that quickly — if, for example, it was going to fall onto a main road — there would have to be guidance to turn that around quickly, and agreement would need to be reached very quickly.

Ms I Kennedy:

I am not sure whether that would necessarily be a planning issue.

The Chairperson:

We have talked about the economic situation, and about giving people a chance. This is the other element, I suppose, through an inspection or structural report. Is there a time limit to that?

Mr Mullaney:

There is already a provision under article 80 of the 1991 Order for urgent works to preserve listed and unlisted buildings in conservation areas. There is also an issue with dangerous structures under building control and environmental health. I would have thought that all those three functions would operate in one body under the new council set-up, in other words, the council. Each council will then be able to co-ordinate their activities in respect of those functions.

Mr W Clarke:

I would like to see guidance for that process.

The Chairperson:

Yes, we certainly need guidance. It needs to be highlighted now. We are aware of it, and some councils may be aware of it, but some may not.

Mr W Clarke:

My other point is about tree protection orders, which is a big issue. Developers can take mature

trees away, and then just take the hit in whatever fine comes along. Is there anything in the Bill about that?

Ms I Kennedy:

The responsibility for tree preservation orders will very much pass to councils.

Mr W Clarke:

It is all very well to say that the council will have the authority to go back and plant the trees, but an awful lot of environmental damage will have been done by that stage. There have been a number of such incidents in my constituency of South Down, especially in Newcastle, and there seems to be a reluctance, even at ministerial level, to deal with the issue. It is a very slow process. How will the Bill speed that up?

Ms Smith:

I think I am right in saying that the Bill will give the power to councils to carry out that enforcement.

Mr W Clarke:

Yes, but what is the fine? Deterrent is maybe a better word, because you could clear a site of trees and it would cost you only the price of an additional house in the scheme. That is a small price to pay.

Ms I Kennedy:

I think that the fine is in the region of £30,000.

Mr W Clarke:

That is what I am saying. That is not a great disincentive to a developer who is going to clear a woodland area of trees and put in maybe 20 or 30 houses. It is OK saying that the council has the authority to go back in and plant the trees, but you have lost a couple of 100-year-old trees.

Ms I Kennedy:

On summary conviction it is a fine not exceeding £30,000. If the route of a conviction on indictment was followed, it could be more than that.

Mr W Clarke:

We need to look at that.

The Chairperson:

The whole issue is about land use and place. When a local council is looking at a certain area, it may be looking at what is there and taking on board the exact topography and everything else that goes with it. If there are trees there, the council needs to look at whether it designates that area for development. However, the element of enforcement will still be needed.

Mr W Clarke:

I see a role for the council working at the local planning stage, bringing the community on board. There may be an opportunity to remove some trees within the landscaping of a site. There could be even tree protection orders.

The Chairperson:

Maybe something can be put into guidelines to say that councils must look at what is in an area in future planning.

Mr Mullaney:

That could be part of the plan process. The opportunity at the moment to have amenity or environmental areas designated in plans could be taken forward, although maybe not to the level of detail of a specific set of trees. Obviously, the legislative provision is to make tree preservation orders. At present, even if areas are designated for environmental amenity, that in itself is not sufficient protection for trees. There then has to be a tree preservation order for one or more trees. It is important to use that facility where it is deemed appropriate to do so.

Mr Kinahan:

I have seen numerous developments where trees have been preserved and estates built around them. Over the years, the tree has then been designated as ill or dangerous and taken down. To the Department or someone, every tree is dangerous, and they then get taken away. We need to find some mechanism, whether it is a specialist in the Department or someone who makes that decision yet at the same time is protected by the law on the insurance side, because in time all those big trees on estates get taken down for lots of reasons, and we lose them anyway.

Mr Mullaney:

That would come down to the expertise that each council employs to make those assessments.

Mr Kinahan:

My council, when I was there — I am no longer there — always avoided any risk, and because it always avoided any risk, every tree was taken down because it was a risk. We need to find something slightly more robust.

The Chairperson:

Yes, and now is the time to do that. If a council feels strongly that it needs a factory built for employment purposes, and a piece of ground is designated for industrial use, we need to be mindful of what is there, especially in environmental terms.

OK, we are going to break for lunch. Thank you very much.