Northern Ireland
Assembly

COMMITTEE FOR THE ENVIRONMENT

OFFICIAL REPORT (Hansard)

Planning Bill

8 February 2011

NORTHERN IRELAND ASSEMBLY

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

Witnesses:

Ms Lois Jackson	)	
Ms Irene Kennedy	)	
Mr Angus Kerr	)	Department of the Environment
Ms Catherine McKinney	)	
Mr Peter Mullaney	)	
Ms Maggie Smith	)	

The Chairperson (Mr Boylan):

I welcome Maggie Smith, Irene Kennedy, Angus Kerr and Catherine McKinney from the Department of the Environment (DOE). Lois Jackson and Peter Mullaney are in the Public Gallery.

Clause 1 (General functions of Department with respect to development of land)

The Chairperson:

Departmental officials agreed at the meeting on 1 February 2011 to consider changing the reference on sustainable development from "contributing to" to "securing". The Department's response indicates that it considers that efforts to secure sustainable development cut across all Departments and that its duty remains one of "contributing to" those efforts.

The Committee also asked the Department to consider removing discrepancies between the wording of the duty towards various policies and guidance between the Department, which is in clause 1, and councils, which are in clause 5. The Department indicates that it will amend the term "have regard to" to "take account of" policies and guidance issued.

In response to the Committee's query on the timescale for the delivery of sustainability across Departments, the Department replied that sustainable development was an ongoing duty and that the Department and councils must have regard to prevailing policies and guidance of other Departments, including the Department for Regional Development (DRD) and the Office of the First Minister and deputy First Minister (OFMDFM). It also said that the timescale was a matter for the Departments concerned. Members were asking about securing that, so will you go through that again, please, Maggie?

Ms Maggie Smith (Department of the Environment):

We thought about that very carefully. It was decided to leave it as it is, because it relates to the Department's role in sustainable development. The duty in the Bill will be a duty on the Department, but it will affect all councils. In effect, it is saying that the planning system is responsible for securing sustainable development.

Clearly, the planning system has an important role to play in sustainable development. We spoke before about sustainable development being one of the issues in planning policy statement (PPS). However, planning is not the only tool to secure, achieve and keep sustainable development going. A public body would contribute to that in many ways, while in the case of councils or the Department, planning would be only one way.

There is a wider duty on public bodies that relates to sustainable development. So from the way that that duty is presented in law, it is clear that there is no expectation that DOE, councils or planning will be the one way to achieve sustainable development. It is clear from the law that there is a recognition that everybody is contributing.

We also feel that it could limit what councils are able to do, because decisions on sustainability are to do with balance. Sometimes that balance goes one way, and sometimes it goes another. Councils will need that flexibility when carrying out their planning functions.

Mr Dallat:

Let us hope that we are all singing from the same hymn sheet. What exactly is meant by sustainable development?

Ms Smith:

I am glad that you asked that question, because that is a big part of the issue. When we were preparing to talk to the Committee at the previous meeting about the early Parts of the Bill, I was doing a bit of research on sustainable development and searching for definitions. There are two interesting parts to the picture. First, there are a number of definitions. Secondly, however, anyone who looks through government documents on sustainable development, that is, those that underpin what we are all trying to achieve through government, would see that they neatly sidestep the whole issue of definition.

We talked about PPS 1 the previous time we spoke, and I said that, when we come to review that part of PPS 1, we will have to think very carefully about what that duty means. That is because we will have to explain, through PPS1, how that new duty will impact on decision-making. At that stage, we will really have to face up to what we mean by sustainable development.

My colleagues may want to chip in about the definition, but generally we look at the three pillars of sustainable development: the environment, the economy and society. In planning terms, we look at issues on how those three pillars are balanced in decision-making.

Mr Dallat:

I am sorry for hogging this time, Chairman. Am I wrong to link that to the recently introduced PPS 23 and PPS 24?

Ms Smith:

No.

The Chairperson:

They are drafts at the minute.

Ms Smith:

Draft PPS 24 talks about economic considerations, and draft PPS 23 is about enabling development. Those would be looked at alongside all the other planning policy statements. That means that a statement that talks about economic considerations would be looked at against others, such as PPS 6, which is about built heritage. PPS 2, which sets out all the very important environmental considerations, could be looked at. A number of planning policy statements could be looked at for a particular application.

Mr Dallat:

I do not think that I have ever got a more honest answer to a difficult question. It illustrates that there are horrendous issues to be overcome if we are ever to put right some of the wrongs of the past where there was an imbalance and villages and towns were practically being wiped out because of *[Inaudible.]* and different Departments had different priorities. Perhaps it is the wrong time to ask, but the role of Roads Service in all this is critical. Is the plan to continue to allow Roads Service *[Inaudible.]*

Ms Smith:

Roads Service and planning are the responsibilities of two different Departments. Roads Service makes a huge contribution to looking at planning applications.

Mr Angus Kerr (Department of the Environment):

The role of Roads Service is critical in the preparation of development plans and in planning applications and decisions. When it comes to the transfer of functions, roads will still reside with DRD, and it is likely that it will continue —

The Chairperson:

Excuse me. Could you please talk into the mic?

Mr Kerr:

Sorry, Chairperson. It is a given that Roads Service will continue to be a key consultee and will have a very important role to play in informing council plans and decisions on planning applications.

Mr Dallat:

I am almost finished. Do you not see that Roads Service will continue to act completely independently of planning, and the motorways are not —

The Chairperson:

Excuse me, Mr Dallat. I cannot hear you. Please move your file over a wee bit.

Mr Dallat:

I am sorry about that.

The Chairperson:

We are going to sort out this mic thing some time today. Please bear with us.

Mr Dallat:

Perhaps it would be best if I am not heard. If no serious consideration is given to the role of Roads Service in planning, is there not a missed opportunity to connect roads, railways and all that element of life? Will there continue to be petty fallings-out between planning and Roads Service? Critical planning applications have been held up because people have different personalities or they are on a different floor, or whatever the reason was in the past. Surely this is

a golden opportunity to put that aspect of roads at least under planning so that something that is more coherent and joined up can be presented.

Ms Smith:

We hear those points about other organisations quite frequently. I do not think that a sustainability duty can change that relationship. However, later provisions in the Bill talk about the relationship between the statutory consultees and the planning system. At the moment, there are only two statutory consultees, and Roads Service is not one of them. Those of us who are not planners take it for granted that Roads Service is a statutory consultee, but it is not. The Bill will give us the opportunity, through regulations, to list a much bigger number of organisations as statutory consultees and to make regulations that govern the timescales within which those organisations respond on planning applications. That timescale would be proportionate to the complexity of the planning application. It is through that part of the Bill and those regulations that we can start to change the relationship between the planning system and other organisations.

Mr Dallat:

Maggie, are you saying that there is an opportunity to look at this issue later? I am sure that many people around this Table feel that there should be an opportunity through the Bill to end the nonsense that goes on across the 26 councils, where Roads Service does not talk to the Planning Service and we cannot get the two to agree on even small issues, never mind anything fundamental to do with planning. I will bide my time until we come back to that issue.

Mr Kinahan:

I am sorry that I was not here earlier. You may have covered this point, and tell me if you have, but I want to talk about sustainable development. Yesterday in the Chamber, we had a debate on biodiversity, and we received legal advice from the Attorney General on how to understand that. Have we taken legal advice on how we interpret sustainable development through the Bill so that it is achievable? Is the wording the best?

Ms Smith:

Legal advice is that the wording in the Bill is the best.

Mr W Clarke:

I take on board that it is hard to put your finger on sustainable development, because everybody has a different interpretation of it. That is a fair point. Everybody has a role to play in achieving sustainable development, and I think that clause 1(2)(b) needs to be much stronger. The objective needs to be "securing" sustainable development. A change of wording is needed. Instead of:

"contributing to the achievement of sustainable development",

the objective has to be "securing" sustainable development. The wording needs to be tighter.

Clause 1(4)(a) is about:

"the physical, economic, social and environmental characteristics of any area, including the purposes for which the land is used;"

I believe that the term "well-being" needs to be included, and that it would sit well in that clause. Well-being goes to the heart of planning, and, through the Bill, we are trying to become involved in spatial planning.

Mr Weir:

Sustainable development is a worthy goal. However, is achieving sustainable development purely the function of planning, or do other areas need to contribute? If sustainable development is purely the function of planning, and if planning is the only thing through which we achieve it, the terms "securing" or "achieving" sustainable development would be reasonable. However, if planning is a significant, but not the only, element of how we achieve sustainable development, surely the wording should be "contributing" to its achievement.

Ms Smith:

Yes. We argue that planning is only one aspect of contributing to sustainable development. Planning on its own cannot achieve sustainable development. Many other factors come into play. We also argue that no organisation on its own can secure or achieve sustainable development. So it involves a contribution from planning and a bigger contribution from a public body.

Mr W Clarke:

I maintain that the planning element is the framework that the rest of the bodies will fit around. It is like a skeleton. Its ambition is to secure sustainable development. Other bodies contribute to securing the goal of the Planning Bill, the objective of which is to secure sustainable development. The rest can fit in with the goal to secure sustainable development, but someone needs to lead the way. Planning provides the overarching framework, and everyone else must fit into the goal of securing sustainable development.

The Chairperson:

Mr Dallat, is your comment on the same point?

Mr Dallat:

Yes, it is. I agree totally with Willie Clarke. Planning has to be the template that everything else functions around, otherwise we will just continue to have the hotchpotch that we had in the past.

Mr W Clarke:

We could just go round in a circle, like we did in the past.

The Chairperson:

I am giving members an opportunity to speak on the matter before we go on. Let us go through one thing first. Willie Clarke mentioned the issue at clause 1(4)(a). Is there an opportunity to insert the word "well-being" into that clause? Is there a commitment to —

Ms Smith:

The issue comes back to what we mean by "well-being". Clause 1(4)(a) sets out in fairly broad terms what can be surveyed. It says:

"including surveys or studies relating to any of the following matters–

(a) the physical, economic, social and environmental characteristics of any area, including the purposes"

and so forth. That gives the latitude to measure lots of things.

It is appropriate to consider surveying "well-being" through the well-being powers that are currently being consulted on, rather than through something that would go into the Bill. The

well-being powers are being looked at under that consultation, and all the legislation and so on for that will need to be designed. It would be best to consider a need to survey well-being as a part of that policy-development process.

Mr W Clarke:

I think that the well-being of the people is fundamental to good planning. It is every bit as important as economic, physical and environmental well-being. The term "well-being" is very broad, too.

The Chairperson:

It is like trying to define "sustainability".

Do members have any other views? Are you saying that this question has to be looked at in the context of another policy?

Ms Smith:

We suggest that, to make sure that the study is tied in with the powers, it would be more appropriate to look at it in the context of the powers of well-being. That matter is out for consultation at present.

Mr Kinahan:

Is that consultation linked to the Planning Bill? Is it one of the 17 or 18 bits of guidance or subordinate legislation that are forthcoming?

Ms Smith:

No. It is the consultation on the draft Local Government (Reorganisation) Bill, which is out at the moment. The power of well-being is the part of it that we have not talked about very much in this arena. However, the consultation on local government reform that went out at the end of November, which includes the new governance arrangements for councils, the new ethical standards regime and community planning, also has a power of well-being.

The Chairperson:

Do Committee members have any comments? Are you still adamant, Mr Clarke, after that

explanation by the Department?

Mr W Clarke:

You could also say that there are different environmental policies, such as economic issues, but those are still included in the Bill. Well-being needs to be in the Bill. Obviously, good housing, infrastructure and crèche facilities are very important for the well-being of a community.

Mr Kinahan:

Does that not come under social work?

Mr W Clarke:

Good parks and exercise as well. It comes under social work and well-being.

The Chairperson:

I propose that the officials take the well-being issue back to the Minister. Unfortunately, we cannot agree the clause until we find out about that. I told members that we would move on if we could not agree a clause.

I also want to nail down the issue of changing "the objective of contributing to" to "the objective of securing". I need some feel for how members feel about that. The Department will stick with:

"exercise its functions under subsection (1) with the objective of contributing to the achievement of sustainable development."

There was a suggesting of replacing "contributing to" to "securing". Do members still feel strongly about "securing"?

Mr Weir:

I am opposed principally on the basis that whatever happens is a contribution. I appreciate what was said. There may be some form of wording that shows that there is a key responsibility. However, simply saying "securing" sends out a signal that everything on sustainable development is done purely by planning, and every other agency or Department could forget about it. There may be a form of wording in between, such as "leading on". I am plucking words out of the air, but there is probably a halfway house that could secure everyone's support.

The Chairperson:

We will look at that issue again and come back to it.

Clause 1 referred for further consideration.

Clause 2 (Preparation of statement of community involvement by Department)

The Chairperson:

The departmental officials agreed at the meeting on 1 February 2011 that the Minister would write to the Committee about the inclusion of a statutory link between local development plans and community strategies. The Minister's letter has been tabled. In it, he confirms that the transfer of planning powers to councils will not take place until the new governance arrangements are in place. The Minister also indicates that an additional function of any new local development plan will be to deliver the spatial aspects of the community plan.

The Committee also accepted that, in the absence of a date for its implementation, precise dates would be best avoided in the Bill. Instead, the Committee requested that a time limitation linked to commencement of the Bill be included in clause 2(1) for the Department to publish a statement of community involvement. The Committee requested sight of that amendment prior to formally agreeing clause 2. The departmental response, which is in members' information packs, includes an amendment that would require the Department to prepare and publish its statement of community involvement within one year from the day appointed for the coming into operation of the clause when enacted.

Are you content, gentlemen? Do members have any questions or want to seek clarification from the Department before I put the Question?

Mr Dallat:

Is there any definition of "community"?

The Chairperson:

We will deal with that issue under clause 4.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 2, subject to the Department's proposed amendment, agreed to.

The Chairperson:

That concludes Part 1 of the Bill. We will obviously return to clause 1.

Clause 3 (Survey of district)

The Chairperson:

At the meeting on 1 February, the departmental officials agreed to report back to the Committee on the possibility of including climate change in the Bill, along with a possible amendment if appropriate. The departmental response in members' packs indicates that it believes that it would be impossible for councils to collate the necessary information from the sectors that produce emissions. Gentlemen, do you have any comments in relation to clause 3?

Mr Dallat:

What is meant by "keep under review" in subsection (1)?

The Chairperson:

I am sorry; I did not hear that. Did you hear that, Angus?

Mr Kerr:

Yes. It essentially means "survey" or "gather information".

The Chairperson:

I did not hear, but did Mr Dallat ask for the definition of "survey"?

Mr Kerr:

He asked what was meant by "keep under review". It means "survey" or "gather information".

The Chairperson:

OK. Are you content with the explanation, Mr Dallat?

Mr Dallat:

I think that I asked this question last week, but "keep under review" seems very vague. Will the review include identifying parts of a town, city or whatever that are falling into dereliction and require regeneration funding? Will it require out-of-balance planning where, for example, one end of a town suddenly becomes a whole concoction of fast-food outlets? There is nothing wrong with fast food outlets, but they tend to cluster, particularly in areas that experience social deprivation. Will the review include all that?

Mr Kerr:

Yes, Chairperson. That —

The Chairperson:

Just adjust the microphone, please, John. Pull it towards you.

Mr Weir:

It is difficult to pick you up.

Mr Dallat:

It would be very unfortunate if I could not be picked up.

The Chairperson:

It is for recording purposes.

Mr Dallat:

I apologise for that. I want Peter to hear every single word that I say.

Mr Weir:

In a few minutes, I may request that you put the microphone back up again.

Mr Dallat:

Will the councils be obliged to identify, as an early warning, things that are going wrong in neighbourhoods in which social deprivation is creeping in and there is the need for regeneration, or, indeed, where there are clusters of the same type of business, which upsets the whole balance of the community?

Mr Kerr:

That is exactly the sort of thing that councils will be expected to do under the clause. Essentially, that sort of information will be critical to preparing their local development plan, which is at the heart of this.

Mr Dallat:

I certainly welcome that. It is a sound basis for making planning decisions currently and in future.

Mr Weir:

The wording at the start of clause is that the council "must keep under review". It is not a permissive power; it is a duty.

Mr Dallat:

Presumably, the councils will be given some kind of clear indication of what they must do.

Mr Weir:

Such as guidance?

Mr Kerr:

Yes, guidance will be issued.

Mr Dallat:

A review could mean two or three dodgy councillors meeting once a year and ticking boxes. You know what they do.

Mr Kerr:

There will be clear guidance on that.

Mr Weir:

I am not sure whether local government would embrace the expression "two or three dodgy councillors."

The Chairperson:

I do not even want to ask whether Hansard has recorded that. Mr Clarke, you mentioned climate change.

Mr W Clarke:

I appreciate the response from the Department on councils not having the resources to gather information on greenhouse gas inventories, and so on.

Climate change will impact on us all. Agriculture probably has a bigger impact on climate change than transport does. The Department of Agriculture and Rural Development (DARD) will look at that, under the direction of the European Union, to see how it will mitigate the impacts on agriculture. I do not see that as a role for councils.

The point that we are trying to get across is that planning in general has to take on the impact of climate change and militate against that. Rising sea levels in Wales are creating a great deal of concern for the planning authorities and what they need to do. I want the Bill to state that councils will militate against the impact of climate change and will build that into their planning process. We need to be strong on that. I cannot agree the clause at the minute. I need a bit more time to look at it.

Mr Kinahan:

Is that not included in clause 3(3)(a)? It states that the matters also include:

"any changes which the council thinks may occur".

It is very specifically put.

The Chairperson:

I still think that we need to look at climate change. Maggie, would you like to respond to the climate change issue and say whether we could tie that into the clause, or why might the Department not consider that?

Ms Smith:

Clause 3 is about surveys. It is about the council keeping things under review, measuring, and so on. We have said in our response that climate change has a particular meaning in respect of survey and data collection, and that that is laid down internationally under the UN framework.

Under the framework, a host of data is collected, then published, and councils can access it if they wish. The collection is done for them, and it is done in a very specialist way. Therefore, if we were asking councils to collect the data, it would cost them a lot of money.

It is being done under an international framework, so standards are set down for the quality of the data and what goes into the data. As experience builds, the quality will get better and better. Therefore, it is beneficial for councils to use the published data if they wish to consult it, rather than to use their own resources trying to collect data, which, in fact, would be very difficult for them to collect.

It is questionable how much use the data would be to them once they collected it. Willie Clarke talked about the role that agriculture plays, but, in planning terms, a council can do nothing to control the impact of agriculture on climate change in a council area.

The Chairperson:

There is obviously an issue here. If members are content, rather than try to get agreement on the clause today, I propose that we draft an amendment, bring it back and discuss it.

Clause 3 referred for further consideration.

Clause 4 (Statement of community involvement)

The Chairperson:

At the meeting on 1 February, the departmental officials agreed to report back to the Committee on neighbour notification and to provide the Committee with examples of community involvement from other jurisdictions. The departmental response says that neighbour notification is a form of advertising and is, therefore, provided for at clause 129. Some examples of statements of community involvement in other jurisdictions are included in the tabled papers.

Neighbour notification would alleviate a lot of problems. You have said that it is covered in clause 129. Does clause 129 determine whether developers or local authorities are responsible for neighbour notification?

Ms Irene Kennedy (Department of the Environment):

I am sorry, Chairperson, I need to make a correction. We should be referring to clause 41, not clause 129.

The Chairperson:

Who is going to have responsibility for neighbour notification? Will it be developers in some cases or local authorities?

Ms I Kennedy:

Clause 41 allows a development order, under subordinate legislation, to make provision for the notice to be given to applications for planning permission and for publishing those applications in the form, content and service of those notices.

The Chairperson:

OK. That is fine to say that the clause allows for that. In simple terms, however, I want to see neighbour notification in statute. Whoever is going to take responsibility, whether it be the developer or, in some cases, local councils, there needs to be proper neighbour notification. I want to know who will take responsibility and ensure that that is applied.

Ms I Kennedy:

We are saying that that will be determined by subordinate legislation rather than by the Bill.

The Chairperson:

Will it be written into subordinate legislation that either the local authority or the developer or both will have responsibility?

Ms I Kennedy:

There could be different cases or different circumstances. In some cases, it may well be that the Department's current role of neighbour-notifying could continue.

The Chairperson:

However, it is not discretionary. Let us be honest: the discretionary days, from my point of view, are gone. To cut out all the issues and objections that are raised afterwards, we need to have a proper notification service. Are we putting that in statute? Are we establishing that either the developer or the local authority has responsibility to carry it out? At present, it is discretionary. I would like to see that tied down in the Bill. If you are saying that it will be established in subordinate legislation, we need to ensure that it is included in one or the other.

Ms Smith:

We have given the Committee the memorandum of delegated powers. The regulation for neighbour notification is not included in that memorandum. We can take that to the Minister and come back to you on it.

The Chairperson:

I thought that you had taken it to the Minister.

Ms Smith:

We did —

The Chairperson:

I understand.

All that I am saying is that, at the minute, it is discretionary. We know what has happened at

local council level. The aftermath of all that is a series of complaints, letters and everything else from people who have not been notified. The easy process, wherever the responsibility lies, is to put in statute a neighbour notification process. If you say that, in some cases, it is going to be a developer, and there is provision in statute for him to do it, fine. In other cases, where the local authority itself undertakes to do that, that is fine.

Mr T Clarke:

Is it not too late for the developer?

The Chairperson:

I want something in the Bill to ensure that someone undertakes the duty.

Mr T Clarke:

Surely it is for the application stage?

The Chairperson:

I do not argue with that. You are correct as to when it is rolled out. However, my point is that we want something in legislation that puts a statutory duty on whoever's responsibility it is to issue a neighbour notification.

Mr T Clarke:

It was supposed to be the applicant's responsibility at the outset. How can it be anyone else's responsibility? The Planning Service should act if a question arose after that; for example, if the neighbour notification has not been made. A developer cannot be put in afterwards. If the person willfully withheld it to prevent someone from objecting, that is a problem and that is where problems arose in the past. We have to have some enforceable element in the application.

The Chairperson:

Therefore, we are saying that the applicant needs to know. When he makes an application, he is duty-bound to neighbour-notify.

Mr T Clarke:

The cop-out for the Department at the moment is that it can say that an application has been put in the paper. However, not everyone scans the newspapers every week to see whether their neighbours are going to build an extension. The onus has to be on whoever is making an application, and it has to be enforceable.

The Chairperson:

You are 100% right. I agree with Mr Clarke — Mr Trevor Clarke, for Hansard purposes. However, it is not just about advertising in the paper. That is correct.

Clause 41 states:

"A development order may make provision".

There is that wee word "may" again. The Bill uses the word "must" earlier. From previous experience, I think that we should put that word in statute, no matter who is undertaking the duty. It must go into statute. At the minute, it is discretionary, and we need to look at that. I want the Department to take that issue to the Minister.

Mr Dallat:

I agree entirely with you, Chairperson. We should look at practice in other European countries where, for example, a planning application is posted on the site, giving details of the planning application, the building control and all the other information that the public need in order to have a reasonable chance of objecting.

People do not read newspapers any more, and, in the past, planning has been advertised in obscure magazines that no one reads. There is also the retrospective planning application. Has that issue been addressed? That is where the clever developer builds the thing first and invariably the planners then cave in. Not always, but mostly.

For the public to have confidence in the planning system, it has to be very transparent. Many people today use the websites, and all that. That is welcome and good. However, occasionally we can learn good practice from, say, France, where notices are posted on the site and people walking past can see, in reasonable detail, what exactly is going to happen.

That suggestion was ventilated in the Assembly before but was turned down. Now that there is a new broom, let us put it in place. What is wrong with putting a notice of what is happening on the site?

The Chairperson:

Would the Department like to respond?

Mr Kerr:

There are a lot of different methods and ways of ensuring that the right people get to know about the planning application. The site notice is one that we are aware is used in several other countries. There is provision in the Bill to look at that in subordinate legislation. There are pros and cons with all these things. For example, what happens if a site notice is put up one day and someone takes it away the next? Failure to keep a site notice up for the duration can cause the community serious problems, because people feel that they are not aware of what is going on.

The Chairperson:

That is fine. Let us worry about the aftermath when it is done. The initial phase of site notices and notification is important.

Mr Weir:

I broadly agree. We need to tease out the way in which we do anything, whether directly through guidance provisions in the Bill, or whatever. Taking on board what Angus said, we need to ensure that whatever is there is visible and, in meeting the provisions, is watertight so that we do not get people saying that they fulfilled the criteria because they put up such and such a notice. OK, hat notice may have been removed the following day, or people may say that they put the notice on site but in a place in which nine out of 10 people would not have seen it.

I may sound cynical, but we must think about how people might subvert the requirements. Whatever is put in the Bill about notification must be watertight. I agree with John Dallat that if an advertisement in a newspaper is deemed enough, nine out of 10 people will not read that. They may not even get the paper. Few people pore over public notices in even their local paper.

A wee bit of thought needs to be given to precisely what advertising, in the widest sense of the word, will be required and whether that should be by way of site notices or direct neighbour notification, or whatever. There needs to be something watertight for letting people know.

The Chairperson:

That is a valid point. However, "For Sale" notices do not generally come down.

Mr Kinahan:

Peter Weir touched on my point about neighbour notification. Everyone within a certain distance used to be told of plans. Is the intention to keep doing that?

Mr Kerr:

That is current practice for adjacent properties within 90 m.

Mr T Clarke:

The problem with that practice is that if the applicant does not disseminate the information, Planning Service does not enforce action against that person for withholding. Although the intention of the provision is good, there must be provision for enforcement action against the applicant, because addresses can wilfully be omitted.

Mr Weir:

Furthermore, with the best will in the world, most of the time it is grand, because the practice is followed. Where that has not happened, the argument has been that the notification was included in such and such a paper, or whatever. The weakness here is that there is no legal requirement to follow that practice. We need to tie that down.

The Chairperson:

Have members had all their points answered or covered? Are you happy?

Mr W Clarke:

Will what constitutes a community group be defined in guidance? I imagine that local authorities will want to consult anyway. I am getting back to the issue of people who have literacy problems

and people form deprived backgrounds who will be represented by their community group. That is worth looking at.

The Chairperson:

I remind members that we have talked mostly about clause 41 as opposed to clause 4. It is just that the issue raised its head under clause 4.

Mr Weir:

That shows how forward-thinking we are.

The Chairperson:

On another point, the paper that the Minister tabled indicates that the Department will include a statutory link between community plans and development plans. After all that debate on clause 41, I will put the Question on clause 4to the Committee.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 4 agreed to.

Clause 5 (Sustainable development)

The Chairperson:

Most respondents wanted to see a stronger commitment to sustainable development by replacing the requirement to contribute —

I think that we have discussed this issue. The clause also talks about the timescales for the delivery of sustainable development, as mentioned in clause 1. Any comments in relation to this, gentlemen? Until we see the clause 1 issue, we cannot make a decision on this clause.

Clause 5 referred for further consideration.

Clause 6 (Local development plan)

The Chairperson:

Almost all respondents wanted to see a statutory link between local development plans, and that has been clarified.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 6 agreed to.

Clause 7 (Preparation of timetable)

The Chairperson:

Most respondents were content that councils should be required to produce a timetable. However, many sought clarification on the detail, and that clarification was given at that time.

Mr Dallat:

We know that a timetable is a fairly flexible instrument. It says here that:

"It will be up to councils to drive their local development plans forward as quickly as possible."

There does not seem to be any obligation to do it within a time frame. Who defines "quickly"? Is it tortoises or greyhounds?

Mr Kerr:

The purpose of the clause is to require councils to set out the timetable for how they wish to deliver the development plan. Yes, the emphasis is that they will do so as quickly as possible. However, the intention is not to prescribe, certainly at this point in time, anything about specific details on how long it will take to do particular aspects of the development plan-making process. The key requirement is that they prepare a timetable and agree it with the Department.

Mr Dallat:

Surely that is what was wrong in the past? These plans have all been floating around for years, developers took planners to court and sometimes the plans never appeared. What powers has the Department to check the timetables of the local councils, and will there be some way of rating their performance?

Mr Kerr:

There is a requirement that councils agree the timetable. If the Department considers that it is an unreasonable timetable and that it is too long, it will be possible for the Department to intervene and direct that the timetable be changed to a more reasonable period.

Mr Dallat:

I am worried that we are making up the rules on the hoof rather than using this opportunity to have something, if not in the Bill then certainly in the guidance notes, to indicate when councils are messing about, holding something back and not performing at the rate that they should. That is what it is all about these days, is it not?

The Chairperson:

I agree, but we have to be reasonable. This is a transfer down, and it is the first time in. I know that there is experience and that there will be a body of work. It will be very hard to nail down an exact timetable. However, there needs to be something there to say what is reasonable.

Mr Kerr:

We have done work on the amount of time in which we expect the development plan to be undertaken and prepared. We put that in the original policy consultation exercise: we hope to see the plan strategy in two years and the final, completed plan in less than four years. Guidance will be prepared for councils to alert them to those requirements. If they come forward with something of the nature of plans in the past, where it took six or seven years or even longer, the Department can address that under clause 7(3).

Mr Dallat:

You have no fears that it will be a case of déjà vu?

The Chairperson:

This is a slightly different matter, but I think that it is key. There will be a lot of complications in all this, and the transitional period is key. If we build in a review period on certain elements, it would be very hard to put pressure on and say that we want to start development within a year. We want to start as early as possible and we want to be reasonable, but we need to build in a review to determine how the whole process works. Can we do that, and who would keep tabs on it?

Ms Smith:

You talked about the transitional arrangements. The first plan will be the trickiest for the

councils. Because of the work that will be done through the pilot projects, there will be some lead-in work. The Planning Service has already done some work with the councils to prepare for the plan —

The Chairperson:

You have answered that point. It keeps coming back again. You are right; the pilot programmes will point towards exactly how it is going. That is correct. I am content enough with that. Mr Dallat, are you happy enough with that?

Mr Dallat:

OK.

The Chairperson:

The pilot programmes will show exactly what progress is being made. That is right. Thank you for reminding me about that.

Ms Smith:

The guidance will as well.

The Chairperson:

I think that all the questions have been asked about clause 7.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 7 agreed to.

Clause 8 (Plan strategy)

The Chairperson:

At the meeting on 1 February, the departmental officials agreed to provide the Committee with details of the subordinate legislation that will follow from this clause and to provide members with an amendment to clause 8(5). The response informs the Committee that subordinate legislation will deal with the form and content of each development plan document, including mapping requirements and justification of policies. It will also cover publicity for the draft

development plan documents and outline how and where they must be made available for inspection. The Department also indicates that it will amend clauses 1 and 5 to bring the wording into line with that used in this clause in relation to obligations towards policies and guidance. Do any members have comments?

Mr Kinahan:

Where does it fit with the area plans that exist or do not exist at the moment?

Mr Kerr:

The position is that the DOE plans will remain in force as material considerations until the new councils do their own plans, which will then replace those.

Mr Kinahan:

Will the ones that do not have area plans at the moment and are sitting in limbo be brought into line?

Mr Kerr:

As soon as the council prepares a plan in an area where a plan is quite out of date, the plan covers brought in by the council plan. Of course, the previous out-of-date Department of the Environment plan is still relevant until it is replaced.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 8 agreed to.

Clause 9 agreed to.

Clause 10 (Independent examination)

The Chairperson:

At the meeting on 1 February, the departmental officials agreed to consider Belfast City Council's comment that:

"In order to safeguard the objectivity and impartiality of the planning process, the Department should only appoint a person other than the PAC to conduct a hearing in exceptional circumstances when there are unacceptable delays caused by the increasing workload of the PAC. The wording of the statute would need to be amended to incorporate this exceptional

clause."

The Department's response indicates that it has maintained the policy that the Planning Appeals Commission (PAC) will be the first port of call for conducting independent examinations. It goes on to say that it is important to have the option of appointing an independent inspector should the commission not be in a position to conduct an examination due to workload pressures. The Department proposes to reinforce that position by amending the Bill to indicate that the Department cannot appoint an independent examiner unless, under clause 10(4)(b), it considers it expedient to do so having first considered the Council's timetable for preparing the plan. The Department also indicates that it will produce clear guidance on the use of independent examiners that will ensure that they are appropriately qualified and independent.

Mr T Clarke:

I am not necessarily excited by the Department's response to the Northern Ireland Local Government Association (NILGA)'s point about the cost. The Department's response is that the PAC is sponsored by the Office of the First Minister and deputy First Minister (OFMDFM), which is fair enough, and it goes on to say that:

"an adequately resourced planning system will be transferred to councils."

Is the Department saying that it will be resourced adequately so that the councils can pay for the privilege of overseeing some of the plans?

The Chairperson:

It is a valid point. Will you respond to that?

Ms Smith:

Sorry?

Mr T Clarke:

NILGA said that clarity is needed on the costs attached to the independent examination. Who will be responsible for covering those costs? You are saying that an adequately resourced planning system will be transferred to councils. To me, that says that you are suggesting that, because the councils are adequately resourced, they will be able to pay for the privilege of your independently examining something, whether they wish you to do that or not.

Mr Kerr:

The Department's position is that we are undertaking a number of reviews on the funding of the planning system and planning fees in relation to how funding will work after the transfer of functions, and this is one of the issues that will be looked at as part of that. It is not all worked out.

Mr T Clarke:

The concern is over who pays for the function. The Department says that it will be on the rare occasion, but I query why the councils should have to do that anyway. Regardless of whether it will be a rare occasion, how can such a mechanism be built into the fee that will cover the cost that the Department will charge the local council for examining that independently?

Ms Smith:

The costs of the planning system have to be looked at in the round. The councils will have income from the fees, and resources will transfer from the Department. As you know, we are working on the amount of resource that will be transferred to ensure that the resource is affordable and will provide a really good service. It is in that context that this will be looked at.

Mr T Clarke:

That is not an answer.

The Chairperson:

Are there any other views?

Mr Dallat:

There is an assumption that the Planning Appeals Commission is a highly desirable body that is just the place in which to put all your trust. Who polices the Planning Appeals Commission?

Ms Smith:

The PAC is completely independent of DOE. It is a non-departmental public body, which means that, legally, it is an entity in its own right. Its sponsor Department is OFMDFM, so its budget comes from there.

Mr Dallat:

Can we be sure that OFMDFM will provide the Planning Appeals Commission with an adequate budget to ensure that the local councils are doing right? I am influenced by some of the things that I know about the PAC and how it operates. Often it depends on bringing in commissioners, who are frequently from Scotland. There is nothing wrong with that, but it seems that you are giving a blank cheque to an organisation that is independent when we have no idea whether it will be funded properly and, indeed, policed.

Mr Kerr:

The Bill brings in the opportunity for us to not use the PAC if circumstances at the time mean that that is the sensible way forward. If the PAC is not well enough resourced to deliver a development plan or independent examination, for example, the Department can now appoint independent examiners. The new system will be less dependent on the PAC.

Mr Dallat:

A lot of faith is required in this.

Mr Kinahan:

If there is always going to be a constraint on PAC resources, we need some sort of fee structure in the system. You said that you would look at that, but we have to get a firm idea of it into the Bill before we put it through. There needs to be a fee structure so that everyone knows where they are going. It is rather like in court: if you lose the case, you pay the costs. The Bill needs to look at some way of paying for it.

Mr T Clarke:

Clause 10 states that:

"The council must submit every development plan".

That concerns me. Coleraine Borough Council and Lisburn City Council said that that was overly bureaucratic, and I agree. NILGA is concerned about the cost that will be passed on to councils. However, the Department's answer is that councils will be adequately resourced.

I hope that this Bill goes through. There have been two opportunities during the term of this

Assembly to change the fees, which the Department can do. Will there be the same opportunities for councils if they find that they are not raising enough money through the planning system? Will they be fit to go back and raise fees continually? The Planning Service had two cracks at this, have not necessarily got it right and keep coming back for more.

Ms Smith:

We are looking carefully at the fees, because they do not adequately address the cost of processing applications, as I am sure you know. We have been out to consultation on that. The fees particularly do not address the cost of processing large applications. The highest fee for a housing or commercial development is less than £12,000, whereas the cost of processing the application can be much higher. We have a situation where the fees are not adequately covering the costs, and the smallest applications are effectively subsidising the big ones. We aim to sort that out long before the system moves to the councils. We will be coming to you shortly with a report proposing the new fee structure.

The Bill has provision for councils to set fees when the powers transfer to them. However, the intention is for the fees to be set by the Department for the first three years after the powers move to councils, although it will, obviously, consult the councils. The intention is for a review after three years and a decision made at that point as to whether councils should set their fees. The cost of reviewing the plans will be taken into account in the transfer of resources to councils. That cost needs to be met somewhere in the system.

The Chairperson:

The PAC is under OFMDFM. If a development plan goes to the Department and to the PAC for checking, will OFMDFM pay for that? Is that the proposal? If your requested amendment to clause 10(4)(b) is made — and you are able to appoint an independent other than the Planning Appeals Commission because of work pressures — who pays for that?

Ms Smith:

At the moment, OFMDFM is the sponsor for the Planning Appeals Commission. There is no proposal to change that. That is part of the vote for OFMDFM. If the Department of the Environment appoints a person to undertake an examination, that will not be paid for by

OFMDFM. It will have to be paid for from the planning system.

The Chairperson:

By the Department or the local council? I am seeking clarity, and I think that that is a valid point. Your proposed amendment to be able to appoint an independent is fine. There is no issue with that — the issue is the cost. Are you saying that, if the local authority goes through the whole process and develops a plan, and the PAC undertakes the assessment or examination, it will be automatically paid for by OFMDFM?

Ms Smith:

Yes.

The Chairperson:

But if it goes to an independent and not the PAC, the local authority will have to pay for it?

Ms Smith:

No. That is not what we are saying.

The Chairperson:

I am only asking. I am seeking clarification on who pays for it.

Ms Smith:

It will have to be paid for by the planning system.

The Chairperson:

Will that resource be there to cover it?

Ms Smith:

Yes.

The Chairperson:

So, the local authority does not pay for it?

Mr Mullaney:

It will be paid for out of fees.

The Chairperson:

Let us be honest: the development plan element is not covered by fees. This is what I am trying to get at. Fees do not cover the element that we are talking about here, folks. You know what the fees cover. If the examination of a development plan is taken back and sent to the PAC, who covers it? Is it OFMDFM?

Ms Smith:

No, OFMDFM only covers the cost of the PAC.

The Chairperson:

Yes, that is what I am saying.

Ms Smith:

The planning system will need to pay for any independent examination. We are just about to look at the —

Mr T Clarke:

When you refer to the planning system, do you mean local councils or the planning department?

Ms Smith:

At the moment, we do not know. That has not been decided.

The Chairperson:

That is the question that I was asking. We have gone round the houses, but we need to sort it out. We need to know who exactly will pay. It needs to be ensured that the resources are there for local authorities to pay for independent checks. There is no point talking about fees. Fees do not count in this respect of a development plan. We need to look at the funding, and we need to know who will pay for it.

Ms Smith:

We can come back to you. We are just about to look at this separately, so we can come back quite quickly on that.

The Chairperson:

It all comes back to resources.

Ms Smith:

Yes, I know.

The Chairperson:

We are doing formal clause-by-clause scrutiny, and we should have had who is responsible for what nailed down. Is there any other clause where we deal with this, in terms of the funding issue in relation to this matter?

Ms I Kennedy:

Not in relation to the independent examination of development plans.

The Chairperson:

I want to take members through the proposed amendment. The proposal is to amend clause 10(4)(b) so that the Department can appoint an independent. Will you clarify the amendment, please?

Ms I Kennedy:

When we last spoke about this, there were concerns that the PAC might not necessarily be the first port of call. We discussed whether, in exceptional circumstances, the Department should be able to appoint a person to carry out an independent examination. We looked at it and thought further. It is important that the PAC remains the first port of call, but, if there are exceptional circumstances due to workload commitments, the Department should be in a position to appoint someone else to carry out the examination.

We thought that the link with the timetabling for the preparation of development plans would be important. That was the basis on which the amendment has been drafted. Therefore, just to be clear, we will not appoint anyone other than the Planning Appeals Commission unless we have had a look at the timetable prepared by the councils for the development plan, and the Department considers it expedient to appoint someone else.

The Chairperson:

That is fine. I understand. How will the wording of the amendment read now?

Ms I Kennedy:

The wording of the amendment was forwarded to the Committee yesterday.

Mr Dallat:

It almost sounds as if we are making up the rules as we go along. If the Planning Appeals Commission is too busy, we will appoint someone else. I am sure that every Department would like to have laws like that so that they could do what they like. Am I wrong?

Ms I Kennedy:

It is acknowledging that it is important that plans move through the system as expeditiously as possible. If there are workload pressures on the Planning Appeals Commission, there will be another option.

Mr Dallat:

What is the other option?

Ms I Kennedy:

The other option is that the Department can appoint an independent person.

The Chairperson:

I have found the amendment among my papers. I think that it came late in the day. It looks fine, but the main issue is the cost. It is reasonable to suggest that if the PAC is snowed under with

work, somebody else will have to be appointed. In principle, that sounds OK. Trevor Clarke raised the issue about who is responsible for the cost. If that was clarified, we could look again at the clause.

Mr Kinahan:

Is there a time frame within which the Department and the councils must agree? They could keep delaying the issue and referring it to the Planning Appeals Commission. However, if it is overloaded and has too many things going on, will there be a time frame within which a decision must be made to go to an independent examiner?

Ms Smith:

No. We talked a few minutes ago about the timetable that the councils will draw up for their plans. It will relate to that timetable, because the PAC will be able to see when the councils are going to be bringing in their plans. As we go along, a close check will be kept so that we can see what stage everybody is at, so we will be able to plan ahead and see whether there is likely to be a glut of plans coming through. It is at that stage that we would appoint an independent person. We would not do it unnecessarily. The amendment is saying that we will keep an eye on the timetable all the time and make the decision in that context.

The Chairperson:

My only fear is that you are giving the PAC an option to say that it is snowed under and that it needs to go back to the Department. That still does not resolve the cost issue.

Mr T Clarke:

That is called tennis.

The Chairperson:

Let us be honest, we need to learn from the examples of the past. All I am concerned about is that the PAC will say that it is snowed under and cannot deal with the workload, so it is back to the Department to appoint somebody else.

Mr Kerr:

We whole reason why we brought this in is because of what has happened in the past. Our legacy is that plans have taken far too long to complete, but many have got to the draft plan stage reasonably quickly. When we looked at the comparison between the work that we have done on plans and that of other jurisdictions, we saw that we get to draft plan stage more or less as quickly as England, Scotland and Wales. The problems in our system arise during the independent examination phase. One of those problems has been the delays that the PAC has created in trying to deal with quite a lot of plans, and quite a lot of big plans, with lots of objections. The legislation as currently drafted requires that we use the PAC. In an attempt to try to get around that and make sure that there is another option, we have made this suggestion, so that we do not find ourselves in the current situation in which plans are delayed and backed up for years and years.

The Chairperson:

That is fine. I believe in the principle of the amendment. However, we are saying that, even if we tackle the costs through rates, we will then be paying rates for a development plan to be independently checked. NILGA does not believe that that is right. Councils will be doing all in their power to put something upfront, deal with all the other sections and adhere to everything, but then it is going to be independently checked. If plans are signed off to somebody else, who pays for that? We say that that cost goes back to the ratepayer, and that that is included in all the exercises. They are trying to adhere to something, but somebody else will do a tick-box exercise to check up on that, and that has to be paid for as well.

You are giving powers to local authorities to develop plans. I agree that, at some point, there needs to be a check on that. However, in an ideal situation, they should have complied with everything before that. There is no doubt that there is definitely an issue around who will pay; it will be the ratepayer.

Mr W Clarke:

Will there be guidance and criteria around how independent examiners are appointed and their impartiality?

Ms Smith:

Yes.

Mr Kerr:

It will ensure that the examiners are independent and appropriately qualified.

Mr T Clarke:

I want to go back to clause 10(1). Is it the purpose of that clause that the independent examination will always go to the PAC if it can cope with the workload?

Ms I Kennedy:

First and foremost, it goes to the PAC, yes.

Mr T Clarke:

If that is the case, why can councils not cut out the Department? I am still concerned that the Department is going to have to have some process in this, which will have another cost. Why can councils not send plans directly to the PAC, which is funded by OFMDFM, or, when we find out who is going to pay for them, the independent examiners? Given that the purpose was to give planning powers to councils and let them create their own area plans, why must plans go to the Department at all? *[Interruption.]*

Mr Kerr:

Saved by the bell.

The Chairperson:

We were going to break for lunch anyway, gentlemen.

Committee suspended for a Division in the House.

On resuming —

The Chairperson:

We will pick up from where we left off at clause 10. I will hand over to Maggie to respond to Mr

Clarke's final point.

Mr Kerr:

If you can just remind me, did you ask why the Bill is written in such a way that would mean that people would not go straight to the PAC but would go through the Department instead?

Mr T Clarke:

Yes.

Mr Kerr:

Essentially, the reason is because the Department is seen as the appropriate body with responsibility, under clause 1, for the:

"orderly and consistent development of land"

in the region to undertake the oversight and scrutiny role for development plans and to make sure that they are consistent with the regional development strategy and with central government plans, polices and guidance. That is why the legislation is written in that way.

The Chairperson:

Mr Clarke, are you happy with that explanation?

Mr T Clarke:

I will let it go. Will we get an answer to the question about the fees?

The Chairperson:

What about the costs, Maggie?

Ms Smith:

We will come back to the Committee in writing on that.

The Chairperson:

That is part of the problem. We have a lot of paperwork and responses and things to consider. However, we are going through the formal clause-by-clause scrutiny, and we cannot make a decision on this clause until we have the exact information. We may need to suggest an amendment. That is why I asked earlier about the independent examination. If we, as a Committee, feel that we need to suggest an amendment on that, we cannot agree it and then go back and amend again. That is why I want clarity on the costs. Is that correct, Irene? If we were to address the issue of responsibility and costs through this clause, would an amendment need to be made to this clause or to another?

Ms I Kennedy:

My view is that this clause and our suggested amendment are separate from the issue of cost, which I appreciate is fundamental and very important. However, the wording and purpose of this clause and our suggested amendment stand separate.

The Chairperson:

That is fine. I just wanted clarity on that. To me, they are not separate. However, the issue of costs under the independent examination has been raised, and we need to discuss it now.

Mr T Clarke:

The Department has been asked questions on this matter, particularly by NILGA. It has been asked and has answered other questions. When it comes to Question Time, Departments are usually quite clever at looking at what relevant questions might arise as a result of previous answers. I would have thought that, given that most of us are especially concerned about the costs, the Department should have known, given the answer to the original question, that further questions would arise on the costs. So, if it had actually answered the questions that the consultees posed, we would not be in this position today and we would not have to wait any longer to get an appropriate answer. I suggest that the Department look at the questions before it answers them, and it should make sure it gives a full answer so that we are not stuck at this point. It said:

"An adequately resourced planning system will be transferred to councils."

That is not an answer. NILGA, which represents all 26 councils, asked a direct question about the cost.

The Chairperson:

Would you like to respond to that?

Ms Smith:

We have tried to answer the questions as best we could and to give full answers. I am sorry that the answer that we gave on that situation was not sufficient.

The Chairperson:

Tell me this, Maggie; do you need to go back to the Minister about this matter?

Ms Smith:

Yes.

The Chairperson:

If you bear in mind what Mr Clarke said, that question should have been clearly asked of the Minister. NILGA responded two weeks ago, I think it was, so there was adequate time to find out an answer. I should point out that we are dealing with not just this Minister, but the Minister for this Department at this point in time. That answer should have been given, but it clearly was not. We now find that you have to go back to the Minister to find out exactly what the cost issue is. You said that you answered the question as best you could. Obviously, the Minister should have been asked that question so that he could give a clear answer. You now have to go back to the Minister to find out exactly how the matter will be sorted out, but we are now going through the formal clause-by-clause scrutiny. I think that we may get agreement on this clause, but we need clear answers about other clauses that relate to funding and to how the system will be funded and resourced. Is that OK?

Ms Smith:

OK.

The Chairperson:

Are there any other points?

Due to time pressures, I suggest that all decisions that are made on clauses today be subject to amendments that may be required as a consequence of decisions that are taken on other clauses. I remind members that, because we await answers on clauses and are deferring parts of clauses, there may be consequential amendments. We will agree some clauses today and put off decisions on others while we wait for more responses. I highlight that point in case it leads to consequential amendments. Are members content with that, or are there any questions?

Mr Weir:

Are you just operating on the standard wording? I am a little concerned. I appreciate what you are saying about consequential amendments, but I do not like that we may agree clauses that we will potentially revisit.

The Chairperson:

I am concerned about that.

The Clerk of Bills:

Should time allow, the ideal procedure would be that the Chairperson would try to facilitate tying down all the issues and taking formal clause-by-clause consideration in the light of all information and proposed amendments. However, given the present pressure, the Committee has decided to proceed as best it can.

Mr Weir:

Is that so that we can hopefully speed things up a bit?

The Chairperson:

That is it. Obviously, we are working against time. We could well take another two days out and go over issues that we already discussed. Other issues have raised their head but have not been answered. On this clause, if the Committee is not happy with the Department's response, we

have to consider suggesting an amendment, be that to this clause or to another. That is all that we are saying.

Mr T Clarke:

This is Tuesday, so surely the Department can communicate to us by Thursday before we accept this clause.

The Chairperson:

There is no doubt about that. However, if we defer this clause and agree others, we may have to revisit certain clauses, and that may lead to consequential amendments. That is the detail of it. In the normal process, we would go through clauses 1 to 40 and deal with them on the day. However, I have to defer them, because unanswered questions mean that we cannot take a decision. Deferring the clauses is the right thing to do. If we had more time during our informal clause-by-clause consideration, we would have been able to nail those things down, have all the answers and deal with the clauses. However, we are under time pressure.

Mr Buchanan:

Is the problem that, by deferring this clause, the answer that we get could have a knock-on effect on some other clause?

The Chairperson:

Yes, that is possible. Alternatively, we may have to revisit something that we already agreed.

Mr Weir:

Let us keep rolling, then.

The Chairperson:

I was just informing members that that was the case.

Irene Kennedy outlined that the resource issue has nothing specifically to do with this clause; it is an amendment to give powers to —

Ms I Kennedy:

Yes, that issue is related to the overall purpose of the clause, but not to the suggested amendment and the clause itself.

The Chairperson:

Will the answer come back to us that other clauses or options can deliver what we want to achieve in addressing the costs? If we need to, will we be able to address the matter under another clause?

Ms I Kennedy:

I am not sure whether that issue will be directly related to the funding clauses. It may be a separate issue of overall funding.

The Chairperson:

We will have to leave this clause. I propose to defer clause 10 and move on to clause 11.

Clause 10 referred for further consideration.

Clause 11 (Withdrawal of development plan documents)

The Chairperson:

Concern was raised about the Department's powers under clause 11. The Department stated that it is an oversight power.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 11 agreed to.

Clause 12 (Adoption)

The Chairperson:

Respondents had concerns, but the Department stated that it was an oversight power. I do not think that there are any other issues on this clause.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 12 agreed to.

Clause 13 (Review of local development plan)

The Chairperson:

Most respondents wanted to see more detail on the time frames under clause 13. The Department stated that more detail would follow in subordinate legislation and that officials expected a review at least every five years.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 13 agreed to.

Clause 14 agreed to.

Clause 15 (Intervention by Department)

The Chairperson:

Respondents indicated concern at the level of control being retained by the Department and sought more detail. The Department stated that clause 15 was a safeguard and would be used only in exceptional circumstances. I am content with that response.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 15 agreed to.

Clause 16 (Department's default powers)

The Chairperson:

The Committee requested that the Department report back to members on consultation with the Planning Appeals Commission to ensure its buy-in on its role under clause 16. The Department's response was referred to earlier when we discussed clause 10. Are members content with the response?

Members indicated assent.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 16 agreed to.

Clause 17 agreed to.

Clause 18 (Power of Department to direct councils to prepare joint plans)

The Chairperson:

There was no objection to the power being given to the Department. One organisation queried how the Bill would address linear infrastructure that may cross several boundaries.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 18 agreed to.

Clause 19 (Exclusion of certain representations)

The Chairperson:

The Department stated that clause 19 was intended to prevent duplication of work. I am content with that response.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 19 agreed to.

Clause 20 (Guidance)

The Chairperson:

There was a suggestion that guidance should include reference to equality and poverty. The Department stated that it has taken that suggestion on board. Would you like to comment on that, please?

Mr Kerr:

The purpose of clause 20 is to ensure that the council has regard to any guidance that the Department for Regional Development or OFMDFM issue in the plan preparation process.

If guidance is produced on any of the additional issues, the clause will have the ability to ensure that that guidance will be taken into account and that the council will have regard to it.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 20 agreed to.

Clause 21 (Annual monitoring report)

The Chairperson:

At the meeting on 1 February, the departmental officials agreed to provide the Committee with examples of monitoring reports. The Department's response is before members. The tabled papers include examples of monitoring reports.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 21 agreed to.

Clause 22 (Regulations)

The Chairperson:

Most respondents called for a commitment from the Department to produce regulations and a timescale for their production. The Department stated that it is already working on subordinate legislation. We are relying on subordinate legislation, Maggie.

Ms Smith:

We gave the Committee a memo of delegated powers. The Committee also has a timetable for that subordinate legislation in the 10 January letter.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 22 agreed to.

The Chairperson:

I advise members that that concludes Part 2 of the Bill. No doubt we will return to it.

Let us move to Part 3, which is "Planning Control".

Clause 23 (Meaning of "development")

The Chairperson:

Some respondents had concerns about the proposals for applications for demolition and suggested that they should be required only in conservation areas or where they affected listed buildings. Mr Kinahan was keen on this matter.

Has the Department any comments to make before I put the Question?

Ms I Kennedy:

Currently, consent for demolition is required only in a conservation area, an area of townscape character or a listed building.

The Chairperson:

Thank you. I am content with that explanation.

Mr T Clarke:

Are those the only cases in which consent for demolition has to be applied for?

Ms I Kennedy:

Yes.

Mr T Clarke:

Will a listed building be protected by natural heritage only if it is in a conservation area?

Ms I Kennedy:

I am sorry. I meant a listed building anywhere.

Mr T Clarke:

Sorry. I thought that you meant that it had to be in one of those areas. I understand.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 23 agreed to.

Clause 24 (Development requiring planning permission)

The Chairperson:

Some respondents wanted clarification of the circumstances under which circumstances clause 24(2) would apply. We had an explanation of that at the previous meeting.

Are there any other comments from the Department?

Ms Smith:

No.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 24 agreed to.

Clause 25 (Hierarchy of developments)

The Chairperson:

At the meeting on 1 February, the departmental officials agreed to report back to the Committee with details of discussions with the Departmental Solicitor's Office (DSO) regarding the wording of the clause. Officials also agreed to consider including criteria for determining "regional significance" in subordinate legislation and ways in which cumulative impact will be taken into consideration for regionally significant developments.

The Department's response, which is in members' information packs, indicates that a direction would most likely be issued by the Department if there were two or more applications for local development and their cumulative effect met the threshold identified under the major development category in the development hierarchy. In that situation, a direction would issue for each application, and that would allow a pre-application community consultation to occur.

Gentlemen, do you have any questions? I am content with the response.

Question, That the Committee is content with the clause, *put and agreed to.*
Clause 25 agreed to.

Clause 26 (Department's jurisdiction in relation to developments of regional significance)

The Chairperson:

Respondents wanted the term "regionally significant" to be defined. That is being addressed by subordinate legislation.

Question, That the Committee is content with the clause, *put and agreed to.*
Clause 26 agreed to.

Clause 27 (Pre-application community consultation)

The Chairperson:

Departmental officials agreed at the meeting on 1 February 2011 to consider the possibility of changing "community consultation" to "community participation" and to report back to the Committee with a definition of "consultation" and "community". The Department's response, which is in members' information packs, refers the Committee to dictionary definitions of the words "consult" and "participate" and argues that "consult" is more appropriate. The Department indicates that "community" is any "persons who appear to the council to have an interest in matters relating to development in its district" and argues that that is wider than those who live in the district.

I think that that is clarification, although I prefer "participation". I am content with the explanation, gentlemen.

Question, That the Committee is content with the clause, *put and agreed to.*
Clause 27 agreed to.

Clause 28 (Pre-application community consultation report)

The Chairperson:

Many respondents wanted the public and community groups to have an opportunity to comment on the consultation report. The Department said that the report would be made available to the public and put on the Internet.

In its response after the stakeholder event, the Department indicated that the clause introduces a requirement on applicants to prepare a pre-application consultation report, which will need to demonstrate how developers approached pre-application consultation and what they did to amend their proposals in the light of the consultation.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 28 agreed to.

Mr T Clarke:

Sorry, Chairman, perhaps I am too late, but would the whole community consultation not actually make it more attractive for the person making the application? It is basically residents' groups that go against applications, and not necessarily for the right reasons. Would that not give them another opportunity to stall the process?

Ms Lois Jackson (Department of the Environment):

It is up to the planning authority to consider as material considerations objections to a report. However, the duty on applicants to show that they have complied with the requirements of pre-application consultation is separate from that. The application could be submitted provided that they fulfilled those requirements to the required standard.

Mr T Clarke:

That is OK. I was concerned that there was another way for somebody to delay the process unduly.

Ms Jackson:

That is separate again from when people can object to a planning application once it is received. Obviously, people are entitled to object even on receipt of the application again. There are two

opportunities to object.

Mr T Clarke:

If the proper process were followed, would it take any longer?

Ms Jackson:

No.

The Chairperson:

The Committee has agreed clause 28, so I will not put the Question again.

Clause 29 (Call in of applications, etc., to Department)

The Chairperson:

Many councils were concerned about clause 29, feeling that it was excessive. They also wanted the clause to be made more specific and to see the criteria that would make an application subject to call-in. The Department stated that the call-in of applications will be consulted on and that applications will be called in only if they are regionally significant. I am content with that explanation. Do any other members wish to raise any issues on call-in?

Mr T Clarke:

Was the issue of compensation raised about call-in?

The Chairperson:

The Bill deals with compensation later.

Mr T Clarke:

Does it apply to call-in?

The Chairperson:

Would you like to respond to that, Maggie?

Ms Smith:

The provisions on compensation do not apply to call-in. The provisions come later in the Bill and prescribe who is responsible for compensation when the Department steps in and carries out the duties of a council.

Mr T Clarke:

I appreciate it that it comes later in the Bill. However, clause 29(1) states:

"The Department may give directions requiring applications for planning permission made to a council, or applications for the approval of a council of any matter required under a development order".

My reading of that is that the Department will be calling into question something that was already approved.

Ms Jackson:

No. It does not happen at that stage.

Ms Smith:

The Department can call in plans for a determination.

Ms Jackson:

An application would be called in only during its determination stage. Call-in would not occur after an approval were issued

The Chairperson:

Are you satisfied with that, Mr Clarke?

Mr T Clarke:

It was just the wording, Chairperson.

The Chairperson:

Can we deal with that issue later when we look at the area of compensation?

Mrs I Kennedy:

There are no implications for compensation. Call-in would occur before decisions were reached.

The Department would call in an application that had gone to a council.

Mr T Clarke:

Would it also apply when applications go to a council for approval?

Ms I Kennedy:

The power applies only to approval for reserved matters.

Mr T Clarke:

Where does it say that?

Ms I Kennedy:

Clause 29(1) refers to:

"applications for the approval of a council of any matter required under a development order".

A development order is a reserved matters application.

The Chairperson:

Do you want more clarity on that, Mr Clarke?

Mr T Clarke:

No, I will let it go. It is not a die-in-a-ditch issue.

The Chairperson:

If you are not happy with the explanation, I want the explanation to —

Mr T Clarke:

No, it is OK. Will call-in happen only prior to a decision being made?

Ms I Kennedy:

Yes.

Mr T Clarke:

OK.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause29 agreed to.

Clause 30 (Pre-determination hearings)

The Chairperson:

I remind members that several organisations wanted minimum criteria for clause 30. The Department stated that the criteria will be dealt with in subordinate legislation.

Members should also be aware that, in its response after the stakeholder event, the Department indicated that clause 30 will give councils the power to hold pre-determination hearings. The aim of those hearings is to make the planning system more inclusive, allowing the views of applicants and those who had made representations to be heard before planning decisions are made. I am content with that explanation. As there are no comments from Committee members, I will put the Question.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 30 agreed to.

Clause 31(Local developments: schemes of delegation)

The Chairperson:

We have received examples of schemes of delegation from the Department, and they will be passed around to members now. While that is being done, I will ask the Clerk of Bills to go through the proposed amendment to clause 247. She will clarify the point on clause 247, page 160, line 16, which was raised earlier.

The Clerk of Bills:

I was advised that the Committee wished to link the commencement of the Bill to the new arrangements on decision-making for councils under the review of public administration (RPA) and local government reform. Matters relating specifically to decision-making in councils are not within the scope of the Bill. Nevertheless, there are things that I felt that we should do on commencement.

First, by way of background, in order to achieve the Committee's objective, decisions would be required in a number of areas, not just in this Bill. However, there is an option to delay commencement with reference to other matters that are known and definable in law. At the moment, to refer to a particular type of decision-making or a particular moment when that decision-making is defined is not definable in law. We cannot refer to the draft Local Government (Reorganisation) Bill because it does not exist in law yet. However, we can look ahead to the process of local government reform and identify the next stages in the process. For example, before the new councils exist, there will have to be a boundaries Order, which will be made under section 50(10) of the Local Government Act (Northern Ireland) 1972. On the basis of those boundaries, new elections will take place to the new councils. Therefore, the amendment proposes to state that no commencement Orders can be made for the Bill until after those two things happen. Therefore, first, the boundaries Order will have to be made and then new elections will have to be held on the basis of those new boundaries. Therefore, the Committee's amendment would not deal with decision-making.

Mr Weir:

My understanding is that checks and balances will be put in place for current councils as part of overall local government reform. Matters will not simply be put on the long finger for the new councils to deal with. If we tie it into specific things that relate to the review of public administration, we preclude planning from coming in ahead of the RPA, which is clearly not the intention.

The intention is for it to come in within the next couple of years, so I would be loath for us to be tied into an amendment of that nature. Indications have been given that it will not happen until there is broader local government reform in respect of some governance arrangements, but that can come in under the 26-council model rather than the 11-council model.

Mr McGlone:

If the RPA does not go ahead as constituted under the proposed 11-council model, there will be no requirement for boundary changes. I want to make sure that one issue is tied in sequentially with the other. Reform of planning will not happen unless there has been local government reform. The proposal is that local government reform needs to go ahead, but the boundaries

Order must be made first and then elections will be held. However, that does not tie it specifically into proposed local government reform, because the legislation is not there yet. What I am saying is that it could conceivably happen with the 26-council model.

The Clerk of Bills:

The Committee's draft amendment appears to me to prevent the Planning Bill from taking effect until after a boundaries Order has been made and elections to new local government councils take place.

Mr Weir is correct. If the next local council elections take place on the basis of the existing 26 council boundaries, the way in which the amendment is drafted at present will not address his desire to allow planning to go ahead on the basis of the current 26 councils before an election or council elections without a boundaries Order. Therefore, if the Committee agrees to take that approach, I will have to take the proposed amendment back and look at it again.

The difficulty presenting itself is that the Committee wishes to connect the Planning Bill to another Bill that does not yet exist and to another set of decisions that have not yet been made. Therefore, we are working with limited possibilities —

Mr Weir:

I appreciate that I have arrived in the middle of the issue. However, one possibility is that the commencement Order could be linked to an affirmative resolution of the House, which would require —

The Clerk of Bills:

Do you mean making commencement subject to draft affirmative resolution?

Mr Weir:

That would be one way of doing it and would kick in the provisions. The idea is that broad local government reform happens from a reorganisation and governance point of view ahead of the planning side. If commencement were subject to draft affirmative resolution, that could be by way of RPA or pre-RPA, by way of local government reorganisation. However, linking

commencement to an affirmative resolution means that if, for example, parties on one side or the other feel that there is an attempt to push in the provisions ahead of RPA, they would effectively have the power to veto or block it and, ultimately, could put down a petition of concern. Cross-party consent would then be required for commencement to go ahead, and it would not necessarily be tied to RPA and the 11-council model; rather, commencement would be tied to the broad reform of local government.

The Clerk of Bills:

Chairperson, you may wish to explore the issue further with the Department, because commencement Orders are usually not subject to any Assembly control. Moreover, under the Bill, there will be a raft of commencement Orders, so the Committee may want to consider which of those are key.

Mr Weir:

I am sure that something could be worked out on that side of things so that some level of approval would have to be given.

The Clerk of Bills:

Yes.

Mr McGlone:

It is quite simple in my mind that the handover of planning powers should not happen until we have RPA, with the adequate checks and balances in place. How we give shape and form to that is another matter. We may want to give a wee bit more thought to how we do that. That seems logical to me.

Mr Weir:

Patsy, the one complication is that, if a resolution ties commencement to the implementation of RPA and 11 councils, it cannot take place while we have a 26-council model. Everyone has accepted that, as part of this process, there needs to be governance reform, and, as part of that, commencement could take place before there are 11 councils. However, it has to take place after there has been reform.

Mr McGlone:

My understanding is that we would have an 11-council model, RPA, reform of local government and checks and balances, with planning being one of the powers to be handed over. If somebody is now suggesting that we move from an 11-council model to a 26-council model, we are getting into —

Mr Weir:

I am not suggesting that. I am saying that, on the governance side, we could be moving towards an 11-council model. However, planning powers could be handed over post-governance reform but before the 11 councils are set up. Therefore, in the interim, planning powers could come to the 26 councils. However, if we tie commencement to an affirmative resolution, commencement can happen only when RPA is fully set in place. That would preclude planning powers coming to the 26 councils ahead of the introduction of an 11-council model. We can all take a position on that. However, my understanding is that it is the Executive's position that governance changes, which are not necessarily linked to RPA being fully implemented or to the 11-council model, be agreed and implemented before planning powers come to councils. That is the differential.

Mr McGlone:

We are back to the —

The Chairperson:

I heard and understand that 100%. I have asked that since day one of the Bill's Committee Stage, and I know that members have gone back and forward on the issue of governance and reorganisation since then. I agree that the 11-council model and everything else are key to commencement, but I need the Committee to come up with some options. Otherwise, we will talk in circles.

Ms Smith:

For clarification, the Minister's position is that planning powers will not go to councils until the governance and ethical standards are in place. The expectation is that there will be a complete transfer of functions — governance arrangements, ethical standards and everything else will

come in. However, if that does not happen, giving those powers to the 26 councils is not ruled out. It is tied to the governance arrangements.

The Chairperson:

We are really talking about commencement. Until that governance is in place, which we support, there will be no commencement of the Bill. We have said that since day one. That is my point of view. Do any other members wish to speak?

Mr McGlone:

We need the mechanism to tie it all in, because that is our duty as a Committee.

The Clerk of Bills:

A Committee always has options and ways of delaying commencement, subject to its getting satisfaction on matters. A standard method is to seek an assurance from the Minister that a Bill will not be commenced unless or until a specified matter is dealt with. In this case, the Committee has sought and received such an assurance, so that is one level. On another level, the Committee can delay commencement, subject to key definable moments in law. That is where we are struggling, because those are outside the Bill.

Thirdly, connected with what Mr Weir said, it is possible to make certain matters subject to draft affirmative resolution. I will look at that. We will identify certain sets of regulations in the Bill that could be made subject to draft affirmative resolution, which would be key to the transfer of those powers. Doing so would require those regulations to come to the House for approval, albeit that it is not the content but the timing that Members would be approving. That would be the reason for taking that decision.

Finally, the House will vote on the Bill at Final Stage. If the timing were not right, the House could defer that decision until later.

The Chairperson:

OK. I am content with that. Therefore, you will come back with —

Mr McGlone:

Will you give us the options, then?

The Clerk of Bills:

To be clear, if the Committee is suggesting that, does it want me to look for sets of regulations that it wants to make subject to draft affirmative resolution?

The Chairperson:

I am content with that, yes. Are we agreed, gentlemen?

Members indicated assent.

The Chairperson:

We now return to clause 31. Included in members' papers is an example of a scheme of delegation.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 31 agreed to.

Clause 32 (Development orders)

The Chairperson:

One submission wanted to see the clause include permitted development rights for minerals. The Department stated that it is currently considering permitted development rights for minerals. Would officials like to clarify that point?

Ms I Kennedy:

Yes. I understand that we have been looking at permitted development rights across a range of areas. We will look at mineral rights in phase two of permitted development rights.

The Chairperson:

OK. We are content with that explanation.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 32 agreed to.

Clause 33 (Simplified planning zones)

The Chairperson:

Clauses 33 to 38 all relate to simplified planning zones, so we will discuss them together. The Committee has heard mixed views on the introduction of simplified planning zones. Some members expressed concern about their introduction into the Bill. The Department stated that, if they are to be introduced, there will be consultation on the approach to be taken on simplified planning zones. I have had some discussion about whether the zones have worked or are needed. If they are proposed, they should go to consultation. That is a safety mechanism that will allow people to consult on it. Can we put a time frame on them?

Ms I Kennedy:

It is very much up to the councils whether they wish to use that tool. Are you thinking of a time period for them to establish simplified planning zones?

The Chairperson:

Yes.

Ms I Kennedy:

It will be very much up to them whether they wish to have any, and when.

The Chairperson:

We are talking about a plan-led system, and you are looking to develop. Given the areas that we have, some of which are urban and some of which are rural, specifically where you would need to designate that or look at simplified planning zones. I am going on some of the examples that we have and on whether they worked. Have members any questions on this matter?

Mr McGlone:

I am sorry that I missed this morning's briefing with Professor Lloyd. A zone that is increasingly defined by a growing number of exclusions from it seems to me to be far from simple. I am

looking at the departmental response and expansion of the list of description of land which must be excluded. It is not very simple.

The Chairperson:

I agree. There are some issues that have to be looked at. Should we consider a planning policy statement?

Ms I Kennedy:

I think that the exclusions that are referred to are making sure that you do not have a simplified planning zone in place in an area of particular merit, be it a conservation area, a special area of conservation or an area of outstanding natural beauty. There are quite a range of areas where you would not want simplified planning zones to be in place.

Mr McGlone:

They will not have planning zones anyway, because they are designated separately.

Ms Smith:

Yes. That is why they are listed in the exclusions.

Mr McGlone:

Why do you except them when they are not going to be covered in the policy anyway? It is like saying that there is going to be an enterprise zone or a rural community in a national park, for instance. It just does not happen. The policy does not provide for it.

The Chairperson:

You would not be looking at certain criteria and business plans.

Mr McGlone:

There seems to be nothing simple about a simplified planning zone. To be frank, we have already had this conversation. The more that I hear, learn and see about it, the more I say to myself that it is one of the most confused designations that I have come across.

The Chairperson:

The question is whether there is a need for them in the new system and whether they have worked in other places. We have a draft paper to prepare for members for Thursday. I propose that we leave the simplified planning zones until Thursday.

Clause 33 referred for further consideration.

Clauses 34-38 referred for further consideration.

Clause 39 (Grant of planning permission in enterprise zones)

The Chairperson:

Three councils had concerns about clause 39. One objected strongly, another required clarification and the third was concerned that such zoned areas are often in the ownership of Invest NI and, therefore, confined to Invest NI client companies. The Department stated that the designation of these zones was also available through the local development plans. Have members any questions? Some issues were raised on this. I am content with the explanation, but we may have to see how we go with simplified planning zones.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 39 agreed to.

Clause 40 (Form and content of applications)

The Chairperson:

The response to this clause called for more robust validation procedures. Other than that, the Committee did not have any issues with it.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 40 agreed to.

Clause 41 (Notice, etc., of applications for planning permission)

The Chairperson:

This clause is back to neighbourhood notification. I hope that we got that all ironed out this morning and that we have a commitment and an understanding of all that before I put it to the

Committee. I feel very strongly about it. We need to clarify whose responsibility that will be from the outset, and that needs to be drafted.

We need information back, so I will leave it for the minute. Does the Department propose to bring an amendment to the clause, or some written guidelines? It is simple; all we need is a process to say that we need neighbourhood notification.

Ms Smith:

We suggested that we should come back to the Committee about that. We talked about it earlier and said that we will talk to the Minister about it.

The Chairperson:

OK, sorry. We will come back to that. That is why we should not have discussed it at clause 4.

Clause 41 referred for further consideration.

Clauses 42 and 43 agreed to.

Mr T Clarke:

I like the principle of clause 42. Is that a change? It says:

"a tenancy of which not less than 40 years".

It is back to proving proof of ownership, where there have been loopholes in the past. Is that something new?

Ms I Kennedy:

There is no change from the existing legislation. The provisions carry forward from the Planning (Northern Ireland) Order 1991.

Mr T Clarke:

That worries me. It is probably not tight enough. I am sure that most people who have been on councils have been involved in planning. When it gets down to something like that and the ownership of land, the Planning Service continues with the process and tells the applicant and the person who is objecting that it is a legal matter that should be sorted out between themselves. I think that it should be sorted out at the outset. I am reading this, and there is a responsibility.

However, Planning Service has always negated that responsibility and told them that it is a legal matter in which it does not get involved.

Mr McGlone:

It stays clear from it.

Mr T Clarke:

We need something in there to make that clear.

The Chairperson:

OK. I will have to come back to clause 42. For the record, I propose to revisit clause 42, and we need the Department to come back in relation to the remarks that Mr Clarke has made.

Ms I Kennedy:

It might help if I draw members' attention to clause 42(6), which makes it an offence to issue a certificate that does not comply with the requirements of the section, or if someone recklessly issues a certificate:

"that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale."

Mr T Clarke:

Is that new?

Ms I Kennedy:

No. It is carried forward.

Mr T Clarke:

They are not using it.

The Chairperson:

You have heard Mr Clarke's concerns. I have clearly marked that we will have to come back to this clause.

Mr T Clarke:

On how many occasions has the Planning Service actually used that power?

The Chairperson:

OK. We will come back to that.

Clause 44 (Appeal against notice under section 43)

The Chairperson:

I remind members that the Committee did not raise any issues with this clause. Have members any points to make?

Mr T Clarke:

Yes, Chairman. There are always points. We are back to the four- and 10-year rules. We had hoped to bring them both into line as four years. It says "4 years or 10 years" which is what we talked about last week.

Ms Smith:

This came up at the last session, and we have got something coming back to you on that.

The Chairperson:

You will come back to us on that. That is fine. That is why the point is made.

Members need to look seriously at what we are asking for. If we say that we are going to go four and four, you have to understand exactly the implications of what we are talking about. However, the Department will come back to us on that.

Mr T Clarke:

If we are having an "adequately resourced planning system", it should not take more than four years to fine someone who has breached the planning regulations. If it is adequately resourced and functioning properly —

The Chairperson:

I do not disagree with that. There is a four-year rule and a 10-year rule, and there is a significant impact on what we are looking at if you now turn round and say four and four. The number of businesses and things that will change under regulations in the six years is — the Department has agreed, and I am not getting into this debate today. The Department will come back to us.

Ms Smith:

This was in the letter that came through on —

The Chairperson:

There are serious implications to what we are proposing. We need to discuss it as a group. If members want to bring forward a Committee amendment to the Bill, we will have to look at that ruling. They are two different things: four-year enforcement and 10-year change of use.

Mr T Clarke:

You talk about change of use. The 10-year rule was designed for unauthorised use, as opposed to change of use. If the building has been used for at least four years as a business, as opposed to as a residence or other, they should pick it up on the four-year rule. If you go after four, and they go change of use, that is a different category again.

The Chairperson:

I can see complications. Maggie, you will come back to the Committee and we will discuss that again.

Mr McGlone:

You are going to have other powers in under the one roof, including building control. It is not as though these officers are going to be 20, 30, 40 or 50 miles away and not communicating with one another. Planning officials and building control officials will hopefully be under the one roof, and certainly within the one management. Therefore, the exchange and flow of information should be that freer and that wee bit more of a read-across nature, whether planning or building control is dealing with the issue. I do not have too many hang-ups with the four and four; in fact, I do not have any. If the council, with proper powers under the one roof and one management

does its job right, it should be able to keep tabs on nearly all developments in its district, unless they are completely and utterly unauthorised.

The Chairperson:

You will come back to us on that, Maggie?

Clause 44 referred for further consideration.

Clauses 45 and 46 agreed to.

Clause 47 (Power of Department to decline to determine subsequent application)

The Chairperson:

No issues were raised by the Committee. Do members wish to raise any issues now?

Mr McGlone:

There is an issue about the validity of planning approval or planning permission. I am not sure whether it fits here, but it is informed by experience in my own constituency. It is those circumstances in which a person is granted planning permission, subject to certain criteria or conditions. Included in those conditions could be the need for sight lines, and, in order to make it workable, the owners of those sight lines may refuse, or may refuse until they are paid the usual commercial transaction of 30% of the value of the site and all that.

Say, for example, in the course of the night, the offending hedge or wall or whatever it might be disappears, not because the owner of the property removes it, but because A N Other conveniently crashes a car or a JCB into it or whatever it might be, and there is no evidence whatsoever as to who did it. In those circumstances, the Planning Service takes the view that the issue that it required to be resolved has been resolved. In other words, the sight line is in situ, albeit that it has been done illegally. There is a major issue there that I think has to be tied down in law. Some will say that the standard recourse is to the civil courts and all of that, but when those issues are not addressed properly and legally, legitimately and otherwise, and those sight lines or whatever other conditions have not been applied or agreed to by the landowner, there is a legal issue that has to be fitted into the planning condition. If that has not been done with the sanction, approval or commercial transaction with the landowner who is the third party, there is

an issue. I do not know whether or how or in what way we can deal with that —

Mr T Clarke:

[Inaudible.]

Mr McGlone:

It is.

Mr Mullaney:

That is a civil matter. It is worth reminding ourselves that you do not actually have to own land to receive planning permission —

Mr McGlone:

I know that.

Mr Mullaney:

You can serve a certificate C and, in theory, develop land without the facility to do so, because you do not own it. The scenario that Mr McGlone outlined is a civil matter between the respective parties, assuming that the relevant condition has been fully complied with.

Mr McGlone:

A condition that is attached to the planning approval can be a negative condition, or it can be just that sight lines must be in place before any construction work commences on site — you know, that type of approval. Is there not a consequence for the legality of the planning approval if sight lines have been obtained fraudulently or illegally or whatever it might be?

Mr T Clarke:

The answer is in the previous one that we asked about earlier. If the Department was enforcing the conditions in relation to clause 44, where someone indicates that they control the land, as Patsy quite rightly said, what happens is that hedges mysteriously disappear by all sorts of means so that someone can get their visibility splays. That has happened in South Antrim as well, not just in Mid-Ulster but in South Antrim. The Planning Service gives the same answer as Mr

Mullaney has today: that it is a legal matter. It should not be, because clearly the land should be in the control of the applicant. If it is not, the Planning Service should be revoking the planning permission.

Mr Mullaney:

I am far from being a lawyer, but you can serve a certificate without owning any land. Even outside the scope of a planning permission, if there was, for instance, a dispute between neighbours and a party hedge or wall was removed or amended in some way, that would be a civil matter between the parties, I would have thought.

The Chairperson:

I would like to see how that could be amended in a planning application. For example, as Mr McGlone said, if you put in a planning application in the countryside for a single dwelling and you have to attain sight lines on land that you do not own. Unless you acquire that piece of ground or are able to do that, you will be refused that permission. It will not be approved.

Mr Mullaney:

No, because you —

The Chairperson:

Mr Clarke is saying, and I take it that you will clarify this, that we need to look at that through the Planning Bill. To be honest, even looking at it, it is about owners of land and whether you give permission. It is very difficult, Trevor, under the planning system.

Mr T Clarke:

We have all been involved in cases when a neighbour has given written consent to have use of a visibility splay, whether commercially or in just a friendly way. In the absence of that, there has to be something in the Bill to prevent someone from just taking something from someone else and making them take a legal case against them to get them to court.

I was involved in one recently. Even the PAC gets involved in this. I was told that because the splay is there, the developer — and it is unfortunate that this was a developer as opposed to a

single development; this is multiple houses — has obtained a visibility splay by the wrong means. They put a condition in the application that he cannot, because of that. However, I am told that if that goes to PAC it will rule in his favour because the splay is there. There has to be something in the Bill to prevent that.

The Chairperson:

That is a prime example that you have highlighted, Mr Clarke. You are correct. That issue has raised its head under this clause. Does this or some other clause deal specifically with that?

Ms I Kennedy:

I do not think that it would come under clause 47, which we are discussing at the moment, which is the power of the Department to decline to determine a subsequent or repeat application. There is no link there.

The Chairperson:

Is there a clause that refers to that?

Mr T Clarke:

Was it clause 44?

Mr Mullaney:

Is it clause 42? Planning permission relates to the land. You could apply for planning permission and obtain it on my land, and I could do the same on your land.

The Chairperson:

You see, Peter, you are 100% right, and that is the problem. I can drive down the road, pick out a site and put in a planning application for it. It is not until that application starts to be assessed that you find out who does and does not own the land.

Mr Mullaney:

A fundamental premise is that planning permission relates to the land.

The Chairperson:

Yes, exactly right. That is correct.

Mr Mullaney:

Not to the person, unless there is a particular circumstance such as an occupancy condition.

The Chairperson:

We understand. I am only saying that the member asked for something in the Bill.

Mr T Clarke:

That point is going off the point about splays. However, that point could also be tied down in the Bill to prevent people from making applications without the permission of the owner of the land. You need to be in control of the land or have some document to say that you have permission to apply for that application.

The Chairperson:

Yes, there is an application process, Peter. Is there anything there?

Mr T Clarke:

Why is there such an anomaly in the system that I can drive along, pick a field in Danny's estate and decide that I am going to put in a planning application without his permission? That is wrong. I think that you must provide evidence as part of the validation process that you are in control of the land or in agreement with the landowner.

Mr Mullaney:

A lot of people in the development industry obtain planning permission subject to purchasing the land. There may be no legal agreement as such. To go down this road would prevent that from happening. If you had to be in ownership of land before you could submit a planning application, it would close off that avenue altogether.

Mr T Clarke:

No, it would not, Chairperson. The agreement of the landowner could be obtained without actual

ownership.

The Chairperson:

I agree, but it is back to clause 42, yes? We need more information, and we need to look at it.

Mr T Clarke:

Yes, but the debate has expanded from what we were talking about in clause 42. Rather than rehearsing this when we next meet, we will, hopefully, have suggestions about one part of it. The fact that we have gone back to clause 42 to expand the conversation has been useful, because if we want to get through this, there is no point in leaving these issues until the next time.

The Chairperson:

No, I totally agree. Do you understand what we are talking about, Peter?

Mr Mullaney:

Absolutely.

The Chairperson:

I agree that it may be difficult, but when we are going through this we need to look at that process. It is no longer acceptable that someone should be able to drive down the road, pick out a site and submit an application, followed by the whole rigmarole of the assessment. Sight lines for visibility, in some cases, are a slightly different matter. We need to look at whether we need to bring that through in an application in the early part of the process of identifying. I do not know, I am just throwing out suggestions about how to deal with that. I do not know, to be fair. You keep saying that it is a civil matter. It is difficult.

Mr Mullaney:

It is, and I do not think that the Department has an answer. One might say that it is a philosophical point, but there is a fundamental point to be made about the purpose of the planning system. The planning permission goes with the land, unless there are particular circumstances, such as in an occupancy condition or whatever, to restrict it to a particular person or persons.

Mr McGlone:

The big problem for me is that there are people who have been distraught about this issue. A situation in which someone, in order to comply with the legality of a planning permission — a legally binding document — has obtained sight lines illegally, is not a matter for a civil action, which the person who, usually, has been offended against, has to take. That person has to spend a pure fortune going to court to assert that something was theirs and is theirs, and even after all that, may not get the outcome that they require. Furthermore, if they reinstate a hedge, put up a fence or build a new wall, it is more or less ignored by Planning Service as long as some official comes out, looks at it and says that it is compliant with sight lines at that particular time. It is a wee bit perverse that a planning application can be obtained, be it fraudulently, illegally or whatever. There is something in there. I do not think that the Department or Planning Service should walk away from that, wash their hands of it and say that it is a matter for the courts. That is very unfair.

Mr Mullaney:

This discussion has illustrated that it is a broader issue and has wider consequences, as Mr Clarke and Mr McGlone have said.

Mr T Clarke:

Look at the way in which clause 42(1) is worded:

"the Department must not entertain an application for planning permission in relation to any land (… referred to as 'the designated land') unless it is accompanied by one … of the following".

The safeguards are there, but they are not being enforced:

"a certificate stating that the application is made … on behalf of the person who at the date of application is in the actual possession of … the designated land".

Why are we not enforcing that? The wording that we are looking for is there, but in practice, we are not getting the Department to enforce that.

Ms I Kennedy:

It is my understanding that each application that comes in is checked to make sure that it does have that certificate attached.

Mr Mullaney:

In fact, the application is not valid if the certificate is not with it. That is one of the reasons why an application would be returned as invalid.

Mr T Clarke:

Do you return them and ask the applicant to fill in a different form in its place? Is that the one that you referred to?

Mr Mullaney:

Certificate C?

Mr T Clarke:

Yes.

Mr Mullaney:

Yes, but the point that Irene is making is that you have to have a completed certificate for it to be a valid application, whatever the certificate is, whether it is A, B, C or D.

Mr T Clarke:

I cannot remember the name of the form.

Ms I Kennedy:

P2.

Mr T Clarke:

P2, yes. But then you can fill in certificate C, which covers land that you do not own. Clause 42(1) says that:

> "the Department must not entertain an application for planning permission in relation to any land".

It goes on to suggest that it is on behalf of the person who owns the land and what have you.

Ms I Kennedy:

There are three options under that: certificate A, B or C.

Mr Mullaney:

There is a P2A. In other words, if a person submits a certificate C, they are meant to serve notice on the person on whose land they are applying for permission.

Mr T Clarke:

You can tell that the system is very complicated.

The Chairperson:

It turns out that, when the system rolls out on the ground, it is still complicated at times. There is no doubt about that.

Mr T Clarke:

Another problem is that, although the Planning Service is in regional offices at the moment and the councils are very detached from them, we are bringing the issue to the local councils, which are probably beside the people who will be affected. The people who usually lose out are those who live on their own and have been bullied by developers. There is no other word for it; they have been bullied by developers who were obtaining land or visibility splays. So we need some sort of protection in the Bill. It is OK to assume that we can just take those guys to court, but how can someone without the means take a developer to court? If that were tied down definitively in the Bill, we would not have that issue.

Mr Buchanan:

The reality is that they are receiving the sight lines under false pretences. For example, if I make an application for a benefit and give false information, it is not a civil matter. The Department would take me to court to get back the money that I got illegally, if you like, because of that false information. Why should the Bill create a difference if someone gives false information to obtain sight lines, and the Planning Service gives approval for it? Why is it not the responsibility of the Planning Service to sort that matter out, rather than to wash its hands of it and say that it is a civil matter?

Mr Mullaney:

There are two issues in that. One is the question of the certificate being correct, which is Mr

Clarke and Mr McGlone's point. A consequence to that can be that somebody enters land illegally that they do not have a right to enter. However, under clause 42(6), as Irene mentioned, someone is guilty of an offence if they issue a certificate that contains a statement that is false or misleading, which is Mr Buchanan's point. That also applies under 42(6)(b) if someone recklessly issues a certificate that purports to comply with those requirements and contains a false or misleading statement. Those two provisions deal with Mr Buchanan's point in cases where somebody knowingly submits a false certificate. That again is a different issue from the point that Mr Clarke and Mr McGlone are making.

Mr T Clarke:

It is not, because an assumption is being made. I suggest that they are making them under that. In six years, I have never seen or heard of the Planning Service treating a case in that way. In any cases that we have been involved in, the Planning Service says that it is a legal matter between the applicant and the person who lost their hedge or visibility, or whatever the case may be.

Mr Mullaney:

I think that that is a different issue again. It is another subset, if you like. It is of whether those two provisions apply to that practice in those circumstances — presumably not. They are in statute.

The Chairperson:

We need to look at clause 42, and the Department needs to come to the Committee with an amendment.

Mr T Clarke:

There are three pages to clause 42, but it could probably be made into one paragraph. There are seven paragraphs to the clause, and five and a half of them contain get-out clauses.

The Chairperson:

On behalf of Mr McGlone, we are requesting information and perhaps a departmental response on the issues raised. Agents should not submit sight lines when they do the applications, because they clearly mark them out as well. I have seen on a number of occasions that they do the work

when they mark out the visibility and the sight lines. So, questions have been asked. I think that we have teased out that issue enough.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 48 agreed to.

Clause 49 (Power of Department to decline to determine overlapping application)

The Chairperson:

The Committee did not raise any issues about this clause, but the Department advised that it will be making a textual amendment to the clause to ensure a consistent approach throughout the Bill. Will you clarify that, please?

Ms I Kennedy:

The amendment that we are proposing is to confirm that it would be for regionally significant development applications submitted to the Department, not call-in.

The Chairperson:

Thank you for that clarification.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 49, subject to the Department's proposed amendment, agreed to.

Committee suspended.

On resuming —

Clause 50 (Duty to decline to determine application where section 27 not complied with)

The Chairperson:

You are welcome back. We have one hour left.

I remind members that the Committee did not raise any issues with this clause.

I must make members aware of the response from the Department following the stakeholder event. The Department indicated that the clause introduces a new power whereby it will be possible for the Department or a council to decline to determine those applications where the applicant has not complied with the necessary consultation.

Question, That the Committee is content with the clause, *put and agreed to.*
Clause 50 agreed to.

Clauses 51 and 52 agreed to.

Clause 53 (Power to impose aftercare conditions on grant of mineral planning permission)

The Chairperson:

At the meeting on 1 February, the departmental officials agreed to consider an amendment to include landfill in the clause and to report back to the Committee on how aftercare conditions will be delivered in the event of insolvency. The departmental response indicates that, as the Department believes that landfill is dealt with elsewhere, there is no need to include it in the Planning Bill.

There is no response on the issue of how aftercare conditions will be delivered in the event of insolvency.

Excuse me, Willie, do you have to go? We cannot take any decisions with only four members.

Mr W Clarke:

Can you give me two minutes?

The Chairperson:

OK.

I am disappointed with the lack of response on landfill aftercare.

Ms I Kennedy:

One of the difficulties is in dealing with insolvent cases. One option that we have discussed with our colleagues who are involved in such cases is to take a phased approach to planning decisions so that when one phase is completed, any aftercare restoration conditions be carried out before the next phase can begin. That would incrementally ensure that, at the point at which a decision and permission are implemented, and where there has not been regular, steady implementation of aftercare throughout the process, we are not left with a situation in which lots of aftercare work or restoration is needed at that point.

Mr T Clarke:

That sounds better than what we have at the moment. However, it will be difficult to build in anything. Although you are talking about mineral planning, the same could be said about developments in which developers become insolvent and leave developments unfinished. Danny will know of the conditions of application in a case in Antrim in which roads have not been finished. I cannot see how we are ever going to build in anything by which, when someone becomes insolvent, someone else can be imposed to do that work.

My question for Irene is, if we go about this piecemeal, what are the possibilities for the Planning Appeals Commission (PAC), which has to take applications for extension without the aftercare relating to the first part of the application?

Ms I Kennedy:

Normally, if someone has not complied with a condition attached to the planning permission, enforcement action could follow. An enforcement notice would be issued and, if there were an appeal, it might go to the PAC.

Mr T Clarke:

Does this come back to the stop notice?

Ms I Kennedy:

That would be if a development were unauthorised. In that case, if there were an enforcement element to the case, a stop notice could be issued.

Mr T Clarke:

I can see where the Chairman is coming from. I take some comfort from what you said about doing it in stages, Irene. However, it worries me that, if the principle of a development is accepted on a site, even though it is for landfill, that could continue without the aftercare. Can we tie in something to prevent phase two happening before phase one is complete? It comes back to the principle.

Ms I Kennedy:

That is what our colleagues have been exploring. Options were that it would be in breach of the permission to commence phase two if phase one were not complete.

Mr T Clarke:

Do they believe that to be enforceable?

Ms I Kennedy:

That is certainly what our discussions with them have been about.

Mr Kinahan:

Is there room for a bond system, similar to that used for roads, by which, in going through each application, the developer pays towards a bond that will cover at least some of the cost?

Mr Mullaney:

Mr Buchanan raised that point at the previous meeting, at which I drew an analogy with Roads Service. The bond for roads development comes under the Private Streets (Northern Ireland) Order 1980, which is separate legislation allied to the planning system. However, quite clearly, in the case of landfill and mineral extraction quarries, which I think were mentioned at the previous meeting, we are talking about potentially significant developments that would require significant amounts of money to rectify if necessary. Therefore, I am not sure how practical

bonds would be. It is something that we would have to think further on.

Ms Smith:

That would be a significant financial burden on the owner.

The Chairperson:

We are not considering an amendment to the clause, because you believe in the current system.

I think that it was Trevor Clarke who talked about not only the aftercare but about the impact of that years later. We have seen sites, especially landfill sites, that have been levelled and sown in seed. Are there after-effects of that that would not be seen initially? Was that raised by Mr Dallat at some point?

Mr T Clarke:

Landfill comes under different legislation.

The Chairperson:

I am only asking.

Mr T Clarke:

It lasts for 99 years.

The Chairperson:

I think that that was raised originally. Is it dealt with in different legislation?

Ms Smith:

Yes.

The Chairperson:

We will have to suspend, because we are inquorate for the purpose of taking decisions.

Committee suspended.

On resuming —

The Chairperson:

Welcome back. We have discussed clause 53. I would have liked to have seen an amendment, but the Department has clarified that aftercare conditions for landfill are covered in other legislation.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 53 agreed to.

Clause 54 (Permission to develop land without compliance with conditions previously attached)

The Chairperson:

I remind members that the only issue raised about this clause was the need for guidance, and the Department has stated that guidance is being drawn up. Can you assure us that that is the case?

Ms Smith:

Yes.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 54 agreed to.

Clause 55 agreed to.

Clause 56 (Directions etc. as to method of dealing with applications)

The Chairperson:

Some of the councils objected to this clause because they believe that it seems excessive. The Department stated it has an oversight role in respect of clause 56.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 56 agreed to.

Clause 57 agreed to.

Clause 58 (Appeals)

The Chairperson:

The reduction of the appeal time frame from six months to four months was generally welcomed.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 58 agreed to.

Clause 59 (Appeal against failure to take planning decision)

The Chairperson:

Respondents wanted clarification on the period that may be specified by a development order. The Department stated that the time period was two months, and I am content with that explanation.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 59 agreed to.

Clause 60 to 68 agreed to.

Clause 69 (Procedure for section 67 orders: opposed cases)

The Chairperson:

One respondent felt this clause gave unnecessary scrutiny powers to the Department. The Department maintain that it has an oversight role in this clause.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 69 agreed to.

Clause 70 (Procedure for section 67 orders: unopposed cases)

The Chairperson:

The Committee did not raise any issues with this clause. However, the Department has since advised that it will make a textual amendment to this clause to ensure a consistent approach throughout the Bill.

Question, That the Committee is content with the clause, as amended by the Department, *put and agreed to.*

Clause 70 agreed to.

Clause 71 (Revocation or modification of planning permission by the Department)

The Chairperson:

Some councils did not support this clause. The Department stated that it would consult the councils before using these powers. Consultation is key in respect of this, and there is a guarantee from the Department in relation to that.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 71 agreed to.

Clause 72 (Orders requiring discontinuance of use or alteration or removal of buildings or works)

The Chairperson:

The Committee has raised no issues in respect of this matter.

Mr McGlone:

I wonder whether there is any sort of read-across between this and the issue that we raised earlier about third-party land. Is there anything there that could be factored in? You know the point that I made earlier about third-party land, and stuff being removed, and the likes.

Mr Mullaney:

I am not sure, to be honest.

Mr McGlone:

As I read through it, it struck me that if there can be orders requiring discontinuation of use or alteration or removal of buildings or works, then that is more or less what we were discussing earlier. Maybe it is not in the same context here, or maybe it was not thought about it in that context. However, it is what we were talking about earlier, in practice.

Mr Mullaney:

I am not sure, but I would have thought that any notice served under that clause could be served only on a person or persons having a legal interest in it.

Mr McGlone:

But that is the issue.

Mr Mullaney:

Yes. I do not want to go over old ground, but my understanding of the first query that came up under clause 42 was that it relates to where an applicant removes or does something on land which is not in his or her ownership to affect a planning permission. Is that not a different issue? That is where the person who has a planning permission is moving outside his or her ownership. The point that I was making about this case, without having looked at it closely, is that a notice is served on whoever is in control of the land.

Mr McGlone:

Or the approval. Maybe I am thinking of this wrongly or thinking a wee bit outside the box, but can an order be served if there is a consequence for a live approval? I am thinking out loud here. Is there an order that can be served on a person to stop works on a live planning application, be that construction works or whatever, for instance, where non-compliance, illegal compliance or fraudulent compliance has been obtained in regard to planning application? It might relate to their sight lines, or whatever it might be. Do you get where my thinking is going on this?

Mr Mullaney:

I do. I do not know the answer; I think that I will have to take advice on that.

Mr McGlone:

Thank you.

The Chairperson:

I need some clear explanation on clause 70 and the textual amendment.

Ms I Kennedy:

Are we going back to clause 70?

The Chairperson:

It has been agreed already, but we could not pick it up exactly. Will you clarify the textual amendment?

Ms I Kennedy:

Essentially, we are removing clause 70(8)(b), because it should not be in that position. An order would not apply to revoke or modify a planning permission deemed to have been granted by direction of the Department of Enterprise, Trade and Investment, so there is no need to include that exclusion. It is to ensure consistency with another part of the Bill.

The Chairperson:

Thank you. I come back then to clause 72. Mr McGlone, you have sought clarification. Are you happy enough with the explanation that you have been given?

Mr McGlone:

Yes.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 72 agreed to.

Clause 73 agreed to.

Clause 74 (Power of Department to make section 72 orders)

The Chairperson:

One submission suggested that, to avoid confusion, the function provided by this clause should lie solely with councils. The Department stated that it will retain the power but will only use it in rare cases.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 74 agreed to.

Clause 75 (Planning agreements)

The Chairperson:

We had issues with this clause. At the meeting on 1 February, the departmental officials agreed to provide the Committee with further clarification on a community infrastructure levy and how it would work in practice. The Department's response provides details of the principle of such a levy**,** and we also have a departmental response on the issue following the stakeholder event**.** The Department believes that the community infrastructure levy is not a planning reform issue and should be considered at Executive level. Research Services have also provided an overview of the community infrastructure levy in use. Do members have any comments?

Mr McGlone:

Where is that community infrastructure levy? Maybe I am on the wrong clause.

The Chairperson:

It does not exist, but there was support for it in the responses. We can look at clause 75 and then come back, because a paper will be provided to us for Thursday on the community infrastructure levy.

Question, That the Committee is content with the clause**,** *put and agreed to.*

Clause 75 agreed to.

Clauses 76 and 77 agreed to.

Clause 78 (Land belonging to councils and development by councils)

The Chairperson:

The Committee did not raise any issues with this clause. However, the Department has since advised that it will make two textual amendments to the clause to ensure a consistent approach. It will be safer if you clarify that for us.

Ms I Kennedy:

Under clause — *[Interruption.]*

The Chairperson:

If you clarify that, we will finish with this clause.

Ms I Kennedy:

Under clause 78(2), we have included the provisions of Part 5, which is about enforcement. The second textual amendment relates to the bottom of page 49 in clause 78(7), where we have left out from "except" to "107". There is a duplication in that clause, and we did not need to repeat the reference to sections 84 and 104 because it is already covered under 78(2)(b).

The Chairperson:

Thank you.

Question, That the Committee is content with the clause as amended by the Department, *put and agreed to.*

Clause 78 agreed to.